

# Markets Post Trade Services Terms & Conditions



These are the Markets Post Trade Services Terms & Conditions forming part of the Agreement governing the following services (each a “Service”) provided by the Bank: (a) confirmations management functionalities (including electronic acceptance, affirmation and/or execution of confirmations); (b) document management functionalities (including retrieval and delivery of documents, reports and statements); (c) Channel services; and (d) other services which the Bank specifies.

It is agreed:

## 1. DEFINITIONS AND INTERPRETATIONS

1.1 In these Terms:

“**Affiliate**” means, in relation to a body corporate, any other body corporate that controls, is controlled by or under common control with it. For the purpose of this definition, a body corporate “**controls**” another body corporate if the first body corporate, directly or indirectly, owns more than half of the issued equity share capital or has the power to appoint more than half of the members of the governing body, of that other body corporate.

“**Agreement**” comprises these Terms, the relevant Country Supplement and any other terms and conditions agreed between the Parties for a Service.

“**Authorised Person**” means any person authorised to act on Client’s behalf in accordance with any mandate (or equivalent in writing) or otherwise, as acceptable to the Bank.

“**Authority**” means any government, quasi-government, inter-government, supranational, administrative, regulatory or supervisory body or authority, court or tribunal with jurisdiction over Client or any Bank Member.

“**Bank**” means the Bank Member that provides the Services to the Client.

“**Bank Member**” means Standard Chartered PLC or any of its Affiliates.

“**Banking Day**” means a day on which banks are open for general business in the applicable Relevant Locations.

“**Channel**” means any means or method (including host to host connectivity, application programming interfaces, an electronic banking channel, a website, SWIFT, the internet, telephony, fax and email) through which the Parties connect or communicate for any purpose including electronic transmission of instructions, other information, data or documents.

“**Client**” means the entity identified in the relevant set up Forms.

“**Client Group**” means the Client and its Affiliates.

“**Country Supplement**” means terms and conditions applicable in respect of a Relevant Location.

“**Delegated Service Provider**” means any provider of cash deposit or withdrawal machines, cash-in-transit or other security services, courier or delivery services, technology services or any other services, used or engaged by the Bank in

connection with a Service, excluding any Payment System Service Provider.

“**Digital Certificate**” means an electronic application used to verify identity or protect electronic messages.

“**Electronic Credential**” means a mode of identification and authentication (in the form of a combination of an identification code, password or Electronic Key) assigned to or selected by Client or a User.

“**Electronic Key**” means a smart card, security token, biometric or any other mode of authentication or verification in any form.

“**Force Majeure**” means any natural disaster, epidemic, war, hostilities, terrorism, civil disorder, industrial action, act or order of any Authority, change in law, change in the availability, legal usage, convertibility or transferability of any currency, computer system malfunction or failure, third party interference with a computer system, delay or non-availability of goods or services supplied to the Bank or Client by a third party, or other circumstances beyond the Bank’s reasonable control.

“**Insolvency Proceedings**” means, in relation to a person, any corporate action, legal proceedings or other analogous procedure or step in any jurisdiction in relation to: (a) suspension of payments, moratorium of any indebtedness, bankruptcy, resolution, insolvency, winding up, dissolution, administration and reorganisation (other than a solvent liquidation or reorganisation) or composition or arrangement with creditors; (b) the appointment of a liquidator (other than in respect of a solvent liquidation), receiver, administrator, judicial manager or similar officer in respect of such person or any of its assets; or (c) expropriation, attachment, sequestration, distress or execution affecting any of such person’s assets or the enforcement of any security over such assets.

“**Instruction**” means any instruction which contains the information the Bank: (a) requires to carry out the instruction; (b) receives via a Channel agreed by the Bank; and (c) believes in good faith has been given by an Authorised Person and is transmitted with such testing or authentication as the Bank may specify.

“**Intellectual Property Rights**” means any rights in relation to tangible and intangible intellectual and industrial property and the right to apply for them, existing anywhere, including any invention, patent, design or utility model rights, logo, domain names, copyright, trade mark, service mark, database right, topography right, commercial or confidential information, know how or trade secret and any other rights of a similar nature or effect, whether or not registered or capable of being registered.

“**Loss**” means any loss, damage, demand, claim, liability, cost or expense (including any direct, indirect or consequential loss, loss of profit, loss of goodwill or loss of reputation) whether or not it was foreseeable or likely to occur.

“**Parties**” means the Bank and Client.

# Markets Post Trade Services

## Terms & Conditions

**“Relevant Locations”** means the countries or territories in which (i) a Service is provided; (ii) the Client is incorporated; and/or (iii) the Bank Member is located (and **“Relevant Location”** shall be construed accordingly).

**“System Materials”** means all technology used to provide Channels, Electronic Keys, Digital Certificates and equipment the Bank makes available to Client or its Users.

**“Tax”** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any associated penalty or interest payable) required by law.

**“User”** means any person Client designates to access and use any Channel.

1.2 Any reference in the Agreement to:

- (a) a document includes any amendment, variation, supplement or its replacement;
- (b) **“person”** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
- (c) a Party or a person includes its successors in title, permitted transferees and permitted assigns;
- (d) **“law”** includes any law, regulation, rule, directive, order, request, guidelines, sanction, embargo and restriction of or agreement with any Authority and any interpretation, application or enforcement of such law;
- (e) **“including”** is not limitative;
- (f) **“writing”** includes email, fax transmission or other electronic means of communication legibly received and **“written”** has the corresponding meaning;
- (g) the singular includes the plural and vice versa;
- (h) if there is any inconsistency between the:
  - (i) Markets Post Trade Services Terms & Conditions and any other Service terms and conditions, the latter will prevail for the purposes of that Service;
  - (ii) Markets Post Trade Services Terms & Conditions and the relevant Country Supplement, the Country Supplement prevails;
  - (iii) English version of the Agreement and any other version, the English version prevails, to the extent permitted by applicable law.

## 2. PARTIES' RESPONSIBILITIES

- 2.1 Each Party must use reasonable care and skill when providing or using a Service. The Client must comply with the Bank's operational, security and authentication procedures, technical requirements and product parameters for the Service.
- 2.2 Client must provide all information, documents and authorisations reasonably requested by the Bank, and promptly notify the Bank of any changes.
- 2.3 Client must comply with all applicable laws when using a Service.
- 2.4 Client must obtain independent legal, tax, accounting and other advice. The Bank does not owe Client any advisory, fiduciary or other similar duty. Client acknowledges that its use of a Service does not create such a duty.
- 2.5 Client must: (a) ensure that all Electronic Credentials, System Materials and the Bank's service documentation are kept secure and confidential, and are not misused; and (b) implement robust controls on Channel use, including the detection, prevention, removal and remedy of malware threats introduced into such Channel. Client is responsible for its Users' actions and must immediately notify the Bank of any actual or attempted security breach or problems with any Channel.

## 3. INSTRUCTIONS AND COMMUNICATIONS

- 3.1 Instructions and communications to the Bank are effective only when actually received and must be: (a) in writing; and (b) given or sent via a Channel acceptable to the Bank, to the relevant address and department as the Bank notified in writing.
- 3.2 The Bank may, but is not obligated to, act on verbal Instructions and communications. Subject to any applicable law, You consent that telephone conversations may be recorded and such recordings used as evidence in any dispute.
- 3.3 The Bank reserves the right not to act on Instructions or communications or perform a Service on a non-Banking Day in one or more Relevant Locations. Instructions or communications received after cut-off times may be treated as received on the next Banking Day.
- 3.4 The Bank reserves the right not to act on any Instructions or to refuse to process any Instruction in its sole discretion.
- 3.5 Communications to Client may be sent to the address notified by Client to the Bank and are effective, if sent by:
  - (a) fax, at the successfully sent transmission report time;
  - (b) hand or courier, at the time of delivery;
  - (c) post, six Banking Days after posting;
  - (d) email, at the time sent; and
  - (e) any other Channel, at the time effected.

# Markets Post Trade Services

## Terms & Conditions

- 3.6 Subject to applicable law, Instructions, communications and documents: (a) digitally signed and supported by a Digital Certificate or Electronic Key; or (b) accepted via an electronic Channel (including click-through or other forms of digital authentication), have the same legal effect, validity and enforceability as if signed in writing.

### 4. AUTHORISED PERSONS

- 4.1 Client is bound by its Authorised Persons' actions and must ensure they are given the appropriate authorisations and act within such authority. An Authorised Person is deemed to have the authority to give Instructions, sign any document and perform any act on its behalf, including when Client acts as a representative or agent of another person.
- 4.2 Changes in Authorised Persons are effective from when the Bank has updated its records.
- 4.3 Client represents, warrants and undertakes that:
- the authorisations of each Authorised Person is in accordance with, and does not breach any, internal corporate governance documents and/or constitutional documents of the Client; and
  - it shall provide evidence of authority, satisfactory to the Bank, of each Authorised Person's authority to act on its behalf as and when requested by the Bank.
- 4.4 The Bank will accept anyone using Client's Electronic Keys or any Electronic Credential as being authorised to act on Client's behalf, and is not required to check the authority of such person. Client remains responsible for all automatically processed transactions while the Bank is processing Client's request to turn off a User's access to a Service.

### 5. LIMITATION OF LIABILITY

- 5.1 The Bank is not liable for any Loss Client may incur arising from or in connection with:
- the Bank acting in accordance with the Agreement or complying with any law;
  - the Bank acting or relying on any Instruction or communication the Bank believes in good faith has been given by an Authorised Person;
  - Client or any Authorised Person breaching any obligation or representation;
  - any act or omission of another Bank Member; or
  - any Force Majeure event,

whether the Loss arises out of breach of contract, a tort, under statute or otherwise. The Bank remains liable for Client's direct loss caused by the Bank's fraud, wilful misconduct or gross negligence. Notwithstanding the foregoing, the Bank excludes any liability for indirect or consequential losses or loss of profit whether or not they were foreseeable or likely to occur.

- 5.2 If and to the extent the Bank is liable, the Bank's total liability for Client's Losses incurred in a calendar year is limited to US\$100,000 or its equivalent in aggregate.

- 5.3 The Services and the System Materials are provided on an "as is" and "as available" basis, and all terms, conditions and warranties express or implied by law (including fitness for purpose) are excluded to the extent permitted by applicable law.

- 5.4 Client must notify the Bank as soon as possible once aware of the material facts of any claim against the Bank, so that the Bank may take appropriate action, including conducting investigations, reserving rights against third parties, preserving evidence and preventing recurrence.

### 6. STATEMENTS AND REPORTS

- 6.1 Client must check Client's statements, confirmations, advices and reports from the Bank and promptly notify the Bank in writing of any mistakes.
- 6.2 Other than material errors or omissions: (a) the Bank's records of all communications, transactions and other information are conclusive; and (b) any rate, price or amount owing to or by Client as notified by the Bank are conclusive.
- 6.3 Client authorises the Bank to disclose any information provided by or relating to Client to any Client Group member in connection with any Service.
- 6.4 Where the Bank collates and reports on data it receives from Client or third parties, as part of a Service, it assumes no responsibility for checking the authenticity, accuracy and completeness of such data.
- 6.5 All reports and other information the Bank provides to the Client are based on its records. The Bank is not responsible where the information is not up to date.

### 7. TERMINATION AND SUSPENSION

- 7.1 Either Party may terminate any Service (or part of it) by giving the other Party at least 30 days' prior written notice.
- 7.2 The Bank may terminate any Service (or part of it) by giving Client notice with immediate effect if:
- Client breaches any obligation or representation under the Agreement or any other agreement between the Parties;
  - Client is the subject of any Insolvency Proceedings (and termination is permitted by applicable law);
  - providing the Service or complying with the Agreement may cause the Bank to breach any law; or
  - the Bank considers circumstances reasonably exceptional to do so.
- 7.3 The Bank may suspend any Service (or part of it) at any time, including where required by law or where a Force Majeure event has occurred. If the Bank does so, it must notify Client as soon as reasonably practicable if permitted by law.

# Markets Post Trade Services

## Terms & Conditions

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7.4 Upon termination of a Service, Client must return all materials relating to the Service provided by the Bank and comply with all reasonable requests in connection with terminating the Service.

7.5 Termination of a Service (or part of it) does not affect the accrued rights and obligations of the Parties.

### 8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Channels, System Materials and Bank service documentation including upgrades, and associated data provided by the Bank are its own or its service providers' property or are open source software and subject to the protection of Intellectual Property Rights. All licences granted by the Bank or its service providers are on a revocable, non-exclusive, non-transferable basis and subject to additional licence terms (including fees) as the Bank may notify Client.

8.2 Client must not:

- (a) reverse engineer or attempt to extract the source code from the System Materials, except where this restriction is expressly prohibited by applicable law;
- (b) change, make copies or derivative works or adaptations of, sub-license or redistribute any part of, the Channel, System Materials or Bank's service documentation without the Bank's written permission; or
- (c) use the Channel, System Materials or Bank's service documentation other than for receiving the Services.

8.3 The Bank may review and change its Channels without incurring any liability to Client. The Bank may decide not to maintain, support or modify a Channel, or maintain a superseded version.

### 9. GENERAL

9.1 The Bank may assign, transfer or otherwise deal with all or any of its rights and/or obligations under the Agreement to a Bank Member without Client's consent, and the Bank may disclose information provided by or relating to Client for such purposes. Client must not assign, transfer or otherwise deal with Client's rights and/or obligations under the Agreement without the Bank's prior written consent.

9.2 The Agreement and any Service may be changed by the Bank from time to time and the Bank will notify Client of such change and its effective date.

9.3 Client confirms Client has not relied and will not rely on any oral or written representation or warranty made, or purportedly made, by or on behalf of the Bank, except as set out in the Agreement. Client waives any warranty (whether express or implied under law) made by the Bank in relation to the Service.

9.4 If any Agreement provision is or becomes illegal, invalid or unenforceable in a jurisdiction, that provision is severed for that jurisdiction only and the other Agreement provisions remain in full force and effect.

9.5 The Parties' rights under the Agreement are in addition to any other rights independent of the Agreement.

9.6 If the Bank does not exercise a right or remedy under the Agreement, it may still exercise it later.

9.7 Any document which forms part of the Agreement may be executed in counterparts, all of which together constitute one and the same instrument.

9.8 Except where the Parties expressly agree otherwise for a specific Service, a person not a party to the Agreement has no right to enjoy or enforce any benefit under it and the consent of any person not a party to the Agreement is not required to amend the Agreement.

### 10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 The Agreement and all non-contractual obligations arising in any way out of or in connection with the Agreement is governed by the laws of England and Wales, and the Parties submit to the non-exclusive jurisdiction of the English courts.

10.2 Client irrevocably waives any sovereign and other immunity in any jurisdiction from legal proceedings, attachment before or after judgment, or execution of judgment.

### 11. PROCESS AGENT

11.1 Where required by the Bank, Client must irrevocably appoint a process agent to receive documents in a court action in connection with the Agreement and notify the Bank of the process agent's name and address. If Client fails to comply, the Bank may (on Client's behalf) appoint a process agent and the Bank will notify Client of the name and address of that process agent and service of any legal process on such process agent shall constitute service on Client.

# Country Supplement – Markets Post Trade Services Terms & Conditions (Germany)



For Services provided to You in or into Germany, the Agreement will be amended as follows:

Capitalised terms used but not defined in this Country Supplement have the meanings set out in the Agreement.

1. The word “immediately” in Clause 2.5 is replaced with “without undue delay (unverzüglich)”.

The words “acceptable to the Bank” in Clause 3.1 is replaced with “agreed between the Parties”.

2. The following new clause 2.6 is added:

“The Bank will keep information provided by or relating to you confidential, except that it may disclose such information (i) to any Bank Member; (ii) to any Bank Member’s professional advisor, insurer, insurance broker or provider of services to facilitate the Group’s operations and provision of products and services across multiple countries (such as operational, administrative, data processing and technological service providers) who are under a duty of confidentiality; or (iii) as required by Law or any Authority.”

3. The following is added at the end of Clause 3.3:

“The Client may ask the Bank for the cut-off times which apply to the Client’s Instructions or communications. Please note that different cut-off times may apply depending on which Channel the Client uses.”

4. Clause 3.4 is replaced by the following clause:

“The Bank reserves the right not to act on any Instructions or to refuse to process any Instruction if we have a valid reason for doing so based on objectively justified reasons.

The Bank will, without undue delay (unverzüglich) (and at the latest, notify the Client (if permitted by law) of:

- (i) its refusal to process an Instruction;
- (ii) the reason for such refusal (or the Client may contact the Bank to find out such reason); and
- (iii) remedies available to the Client.

The Bank may charge mutually agreed costs of notifying the Client of such refusal.”

5. Clause 3.5 will be replaced with the following:

“Communications of the Bank will be effective if they have been “received” (zugegangen) by the Client. Unless otherwise provided, notices and communications (except for notices that are of special importance (e.g. termination notice)) will be deemed to have been received if sent by:

- (a) fax, at the successfully sent transmission report time;
- (b) hand or courier, at the time of delivery;
- (c) post, six Banking Days after posting; and
- (d) any other Channels, at the time effected.”

6. Clause 4.2 will be replaced with the following:

“Changes in Authorised Persons are effective from when the Client notified the Bank in accordance with this Agreement and the Bank has acknowledged receipt.”

7. Clause 5.1 will be replaced by the following:

“5.1 Liability of the Bank; Your contributory negligence:

(a) In performing its obligations, the Bank shall be liable for any negligence on the part of its staff and of those persons whom the Bank may call in for the performance of its obligations. If the special conditions for particular business relations or other agreements contain provisions inconsistent herewith, such provisions shall prevail. If the Client has contributed to the occurrence of the Loss by its own fault (e.g. by violating its responsibilities as described in this Agreement), the principles of contributory negligence shall determine the extent to which the Bank and the Client shall have to bear the Loss.

(b) If the contents of an instruction are such that the Bank typically entrusts a third party with its further execution, the Bank performs the order by passing it on to the third party in the Bank’s own name (order passed on to a third party). In such cases, liability of the Bank shall be limited to the careful selection and instruction of the third party.

(c) The Bank shall not be liable for any losses caused by Force Majeure.

(d) Any claims by You shall be precluded if the circumstances substantiating a claim:

(A) are based upon an abnormal and unforeseeable event beyond the Bank’s control and whose consequences could not have been avoided even by exercising due diligence; or

(B) were brought about by the Bank as a result of a statutory obligation.”

8. The following is added at the end of Clause 5.2:

“These limitations on liability shall not apply to deliberate intent or gross negligence by the Bank or to risks which the Bank has assumed on an exceptional basis.”

9. Clauses 5.3. and 5.4. shall be removed in their entirety.

10. Clause 6.2 will be replaced by the following Clause 6.2:

“Unless the error or omission is material

(a) the Bank’s records of all communications, transactions and other information are conclusive; and

(b) any rate, price or amount owing to or by Client as notified by the Bank are conclusive

where the Client has failed to inform the Bank of mistakes in line with the previous paragraph.”

11. Clause 6.5 second sentence shall be amended by adding the words “due to no fault on the side of the Bank”.

12. Clause 7.2 will be replaced by the following:

## Country Supplement – Germany

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"The Bank may terminate any Service (or part of it) with immediate effect by giving the Client notice without undue delay (unverzüglich) if:

- (a) The Client breaches any material obligation or representation under the Agreement or any other agreement between the Parties.
- (b) The Client is the subject of any Insolvency Proceedings in relation to all or any part of its revenue or assets;
- (c) based on objective reasons, complying with the Agreement would cause any Party to breach any applicable law; or
- (d) the Bank considers circumstances affecting such Services reasonably exceptional to do so and based on which the Bank cannot reasonably be expected to continue such Services."

Clause 7.3 will be replaced by the following:

"The Bank may suspend any Service (or part of it) where required by applicable law. If the Bank does so, in the event the Bank is unable to inform the Client prior to the suspension, the Bank will notify You, at the latest, without undue delay (unverzüglich) thereafter (in each case, if permitted by law)."

13. Clause 8.3. sentence will be replaced by the following:

"The Bank may review and change its Channels in accordance with Clause 9.2 without incurring any liability to Client."

14. Clause 9.2 will be replaced by the following:

"Changes to the Agreement and any Service shall be offered to the Client in writing no later than six weeks before the proposed date of their entry into force. The amendments offered by the Bank shall become effective only if the Client accepts them, either by way of deemed consent or explicitly. Unless changes target at increasing charges or affect the agreed Services to the Client's detriment (in which case the Bank will ask for explicit acceptance of its offer), the Client's silence shall be deemed to constitute acceptance of the offer (deemed consent) if the Client has not rejected the Bank's offer prior to the proposed effective date of the amendment. The Bank shall inform the Client of the consequences of silence in the offer and advise the Client of the right to terminate the agreement free of charge prior to the proposed date on which the changes take effect."

15. Clause 10.1 will be replaced by the following

"The Agreement and all non-contractual obligations arising in any way out of or in connection with the Agreement is governed by the laws of the Federal Republic of Germany, and the Parties submit to the non-exclusive jurisdiction of the courts in Frankfurt, Germany."