

# FINANCIAL MARKET INSTRUMENTS

**AFB  
MASTER AGREEMENT  
FOR FOREIGN  
EXCHANGE  
AND  
DERIVATIVES  
TRANSACTIONS**

Collection "Techniques de la Banque"

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# **MASTER AGREEMENT RELATING TO FOREIGN EXCHANGE AND DERIVATIVES TRANSACTIONS**

This Master Agreement (the 'Agreement') is entered into between:

represented by:

acting on behalf of the head office and all branches and

represented by:

acting on behalf of the head office and all branches

(the 'Parties')

The Parties have entered into this Agreement in order to govern their foreign exchange and derivatives transactions, present and future, to assume them under a single agreement and to set out the general principles applicable thereto, and benefit from all relevant legislative provisions, in particular Articles 1 and 2 of the law of 28 March 1885, as amended, relating to foreign exchange and derivatives markets.

## ARTICLE 1 - GENERAL PRINCIPLES OF THE AGREEMENT

1.1 The general principles of this Agreement (the 'General Principles') are as follows:

- all transactions entered into pursuant to this Agreement shall constitute one and the same for the purposes of termination and netting;
- only those transactions mentioned in Article 1 of the law of 28 March 1885 as amended, relating to forward, futures and options markets, shall be subject to this Agreement;
- a default by either Party shall entitle the other Party to terminate all transactions subject to this Agreement, to set off mutual debts and credits thereunder and determine a settlement amount due to, or payable by it; and
- such settlement amount shall be calculated on the basis of an agreed method of valuation which reflects the market value of the transactions at their date of termination.

1.2 The Parties may, in accordance with the General Principles, amend the terms of this Agreement by means of a schedule forming an integral part of the Agreement, or by a supplemental agreement. Such amendments shall prevail over the provisions of the Agreement.

## ARTICLE 2 - DEFINITIONS

### AGENT

A person (a Party or a third party) designated as such in respect of a given Transaction at the time it is entered into, and whose obligations are set out in Article 5.5.

### AMOUNT DUE

In relation to a terminated Transaction and a Party, the sum of :

- any amounts payable by such Party and not paid (for whatever reason) at the Termination Date;
- the Market Value, as at the Delivery date, of each Underlying Asset to be delivered by such Party and not delivered (for whatever reason) at the Termination Date; and
- applicable interest, calculated from the due date for payment or Delivery to the Termination Date; such interest shall be calculated at the rate set out in Article 9.1 if the Party liable for such amounts or Deliveries is the Defaulting Party, and otherwise at such rate less 1% per annum.

### BUSINESS DAY

A day on which banks are open for the settlement of interbank transactions and for the determination of market quotations in the relevant financial centre.

### CHANGE IN CIRCUMSTANCES

An event mentioned in Article 7.2.

### CONFIRMATION

A document forming part of this Agreement and evidencing the agreement of the Parties on the terms and conditions of a Transaction concluded between them, and setting out its specific terms and conditions. A form of confirmation is annexed to the Technical Schedule for each type of Transaction.

### CURRENCY

Any freely convertible and transferable currency, including ECU.

### DELIVERY

The transfer of unencumbered title, without any recourse or restriction, of the relevant Underlying Asset or if the Underlying Asset is a particular Transaction, the entry into of such Transaction. Deliveries shall be effected (and related costs borne) in the manner generally accepted in banking relations for such Underlying Asset and may give rise to simultaneous payment of the purchase price for the relevant Underlying Asset by the Party entitled to delivery thereof.

### EVENT OF DEFAULT

An event mentioned in Article 7.1.

### MARKET VALUE

In respect of any Underlying Asset other than a transaction on a regulated market, the value of such Underlying Asset (net of costs and various acquisition taxes) as established on its principal market of quotation or negotiation.

Where the Underlying Asset is a transaction on a regulated market, its value shall be that prevailing on the relevant regulated market or the Replacement Value of such transaction.

## REPLACEMENT VALUE

The Replacement Value shall be calculated by the Non Defaulting Party or the Non Affected Party (or, if there are two Affected Parties, each Affected Party). For any given Transaction it shall be the arithmetic mean of quotations from at least two prime market participants. Each such quotation shall be expressed as the amount that the market participant would pay or receive on the Termination Date if such market participant had to assume as from such date the whole of the financial rights and obligations of the other Party under the relevant Transaction. The resulting amount shall be expressed as a positive amount where it is payable to the market participant, and shall otherwise be expressed as a negative amount.

If only one quotation can be obtained, the Replacement Value shall be determined by such quotation. If no quotation can reasonably be obtained, the Replacement Value shall, as the case may be, equal the profit (and shall be a negative amount) of the Party responsible for the calculation, or the losses (and shall be a positive amount) of such Party incurred as a result of termination of the Transaction.

The Party determining the Replacement Value shall select the market participants from whom the above quotations are requested.

## TECHNICAL SCHEDULE

A document prepared and published by the Association Française des Banques, which sets out for any type of transaction the terms and technical characteristics relating to such Transaction.

## TERMINATION CURRENCY

The Currency selected by the Non-Defaulting Party or the Non-Affected Party, in which the Settlement Amount is denominated and payable. If there are two Affected Parties, the Termination Currency shall be selected by agreement between the Parties. Should the parties fail to reach agreement, the selection shall be made by the Party having suffered the greatest loss, as determined at the Termination Date. The selection of Termination Currency shall be made from among the currencies already used in one of the Transactions entered into between the Parties.

## TERMINATION DATE

The date on which all Transactions between the Parties are terminated (upon the occurrence of an Event of Default) or, termination of the affected Transactions only (upon the occurrence of a Change in Circumstances). Such date shall be :

- a) in the case of an Event of Default mentioned in Article 7.1.1.6, the date of the judgment commencing the proceedings, or any equivalent proceedings or, if the Non Defaulting Party specified in the termination notice so chooses, the date of publication of such judgement or proceedings;
- b) in the case of an Event of Default mentioned in Article 7.1.1.7, the date of the court decision ordering the winding-up, or any equivalent proceedings; and
- c) in all other cases, the Business Day selected by the Party giving notice of termination, being any date from the date of receipt of the notice and the tenth Business Day inclusive thereafter.

## TRANSACTION

Any over the counter market transaction settlement of which occurs on a date after its date of conclusion, such as a forward contract, an option, a swap, any combination of the foregoing or any similar contract relating, in accordance with Article 1 of the law of 28 March 1885, to any forward, futures or option transaction on government bonds or otherwise, securities, commodities, goods, interest rates, indices or Currencies or any combination of such Underlying Assets.

## UNDERLYING ASSET

Any security, commodity, instrument, or market transaction or Transaction to which a Transaction relates.

## ARTICLE 3 - APPLICATION OF THE AGREEMENT AND THE TECHNICAL SCHEDULES

**3.1** This Agreement shall apply as between the Parties to all their outstanding Transactions, whether or not such Transactions are governed by a master agreement and whether or not such master agreement is governed by the general conditions of a market, and to future Transactions of the Parties. Notwithstanding the foregoing, Transactions which, at the time they were entered into, were expressly excluded from the scope of any such master agreement shall not be subject to this Agreement.

**3.2** The provisions of this Agreement shall prevail over those of the master agreements mentioned in Article 3.1 and the Transactions governed by such master agreements shall be automatically governed by the terms of this Agreement with effect from its execution. Technical provisions in the above master agreements shall remain in force in respect of Transactions so far as they are not inconsistent with the provisions of this Agreement, and shall form an integral part hereof.

**3.3** The Schedules, which shall form an integral part of this Agreement, shall apply from the date of their publication or amendment to all Transactions entered into after that date unless one Party does not agree and has so notified the other Party as provided in Article 4.2 below.

## ARTICLE 4 - CONCLUSION OF TRANSACTIONS

**4.1** Transactions may be entered into by any means, and shall be effective at such time as the Parties have reached agreement. Each Party authorises the other to record any telephone conversations relating to the conclusion of their Transactions.

**4.2** The conclusion of any Transaction shall be followed by an exchange of Confirmations by letter, telex, telefax or any system of electronic communication considered sufficiently reliable by the Parties. The absence of a Confirmation by one of the Parties shall not affect the validity of a Transaction. In the event of disagreement over the terms of a Confirmation, such disagreement shall be notified immediately to the other Party, and each Party may adduce its recorded telephone conversations as evidence of the terms of the relevant Transaction.

4.3 The Parties may, subject to the General Principles, adopt in relation to any Transaction, particular provisions amending the terms of this Agreement. Such provisions shall be set out in the Confirmation for the relevant Transaction, and shall prevail, but only in relation to such Transaction.

## **ARTICLE 5 - PAYMENT AND DELIVERY - ROLE OF THE AGENT**

### **5.1 Payments**

Subject to Articles 5.3 and 7.3, each Party shall, in respect of each Transaction, make each payment due in the Currency, on the date and at the place set out in the relevant Confirmation.

### **5.2 Delivery**

Subject to Articles 5.3 and 7.3, each Party shall, in respect of each Transaction, effect each Delivery it is required to effect, in the manner, at the date and in the place set out in the relevant Confirmation.

### **5.3 Set-Off**

The Parties may agree to set-off their payment obligations denominated in the same Currency or their Deliveries of fungible Underlying Assets, to the extent that such payments or Deliveries are reciprocal and occur on the same day.

### **5.4 Third Party Recipient**

Each Party may at any time designate in respect of one or more Transactions an intermediary of good standing as recipient of payments and/or Deliveries. Such intermediary shall be required to verify that payments and/or Deliveries are effected in a reciprocal manner and simultaneously. All costs, charges and out of pocket expenses resulting from the use of this procedure shall be for the account of such Party. The other Party shall be bound by such designation.

### **5.5 Role and Obligations of the Agent**

In the event that an Agent has been designated for a particular Transaction, it shall obtain, in good time, such information as is necessary for it to determine the amounts to be paid and/or the quantities of Underlying Asset to be delivered by each of the Parties. It shall be responsible for carrying out the calculations necessary. It shall, as soon as possible notify such information and details of the calculations carried out. Such information and calculations shall be conclusive, and in the absence of manifest error, shall be binding.

## **ARTICLE 6 - REPRESENTATIONS**

Each Party represents and warrants at the time of entering into this Agreement, and on each date on which a Transaction is entered into:

6.1 that it is validly organised and conducting its business in compliance with all applicable laws, decrees, regulations, market rules and articles of incorporation (or other constitutive documents) which are applicable to it;

6.2 that it has full authority and capacity to enter into this Agreement and each Transaction relating thereto, and that this Agreement and each such Transaction have been validly authorised by all internal procedure and any competent internal authority;

6.3 that the entry into and performance of this Agreement and each Transaction relating thereto do not contravene any provision of any law, decree, regulation, market rule or articles of incorporation (or other constitutive documents) applicable to it;

6.4 that all permits, licences and authorisations which may be necessary for the execution and performance of this Agreement and each Transaction relating thereto have been obtained and are in effect;

6.5 that the Agreement and each Transaction concluded pursuant hereto constitute a set of rights and obligations which are enforceable against such Party in respect of all their terms;

6.6 there is no Event of Default in respect of such Party;

6.7 that it has the necessary knowledge and experience to assess the benefits and risks incurred pursuant to each Transaction and has not relied for such purpose on the other Party; and

6.8 there exists no legal or arbitral action or judicial or administrative procedure or other measure which could result in a substantial deterioration of such Party's business, its assets or financial condition or which could affect the validity or the due performance of this Agreement or of any Transaction.

## **ARTICLE 7 - TERMINATION OF TRANSACTIONS**

### **7.1 DEFAULT TERMINATION**

7.1.1 Each of the following events shall constitute an Event of Default in respect of one of the Parties (the 'Defaulting Party'):

7.1.1.1 a failure to make any payment or Delivery pursuant to a Transaction which failure has not been remedied within three Business Days following notification of default in payment or Delivery by the other Party (the 'Non-Defaulting Party');

7.1.1.2 a failure to perform any other obligation pursuant to this Agreement which failure has not been remedied within seven Business Days following notification of default by the Non-Defaulting Party;

7.1.1.3 any representation made under Article 6 proves to have been incorrect when made or repeated or ceases to be correct in any material respect;

7.1.1.4 a declaration that it cannot pay or perform, or a refusal to pay all or any part of its debts or perform its obligations, a declaration of a governmental or judicial moratorium, a voluntary arrangement with creditors, the appointment of an administrator upon the request of regulatory authorities or the court, the prohibition by any regulatory authority from dealing on a market, or any equivalent procedure;

7.1.1.5 the cessation of activity, commencement of a voluntary winding up procedure or any other equivalent procedure;

7.1.1.6 subject to applicable law, the commencement of rehabilitation proceedings or any equivalent proceedings relating to the head-office or any branch of one of the Parties;

7.1.1.7 the commencement of liquidation proceedings or any other equivalent proceedings, affecting the head-office or one of the branches of one of the Parties;

7.1.1.8 a failure to perform any payment obligation with respect to the other Party or any third party, other than such obligations arising out of this Agreement or a Transaction, save in the event of manifest error or unless such payment is subject to a serious substantive dispute; or

7.1.1.9 any event capable of resulting in any security interest or guarantee granted in favour of the Non-Defaulting Party in respect of one or more Transactions becoming void, unenforceable or ceasing to exist, or any event mentioned in Article 7.1.1.4 to 7.1.1.8 affecting a third party which has guaranteed one or more Transactions.

7.1.2 Upon the occurrence of an Event of Default, the Non-Defaulting Party shall be entitled, by notice given to the Defaulting Party, to suspend performance of its payment and Delivery obligations and to terminate all outstanding Transactions between the Parties, irrespective of their place of conclusion or performance. Such notice shall specify the Event of Default and the Termination Date applicable.

## 7.2 TERMINATION BY REASON OF CHANGE IN CIRCUMSTANCES

7.2.1 Each of the following events shall constitute a Change in Circumstances for a Party (the 'Affected Party'):

7.2.1.1 The entry into force of a new law or regulation, the amendment of any law or any other provision of mandatory effect or any change in the judicial or administrative interpretation of any such provision which results in a Transaction being illegal for such Party, or which results in a deduction or withholding on account of tax on an amount receivable from the other Party under such Transaction; or

7.2.1.2 any merger or demerger affecting such Party or any transfer of assets effected by the latter which results in a substantial deterioration in its business, its assets or its financial condition.

7.2.2 On the occurrence of a Change in Circumstances mentioned in Article 7.2.1.1., any Party which becomes aware thereof shall notify the other Party as soon as possible, identifying the Transactions affected by such Change in Circumstances. The Parties shall suspend performance of their payment and Delivery obligations under the affected Transactions, and shall attempt in good faith for a period of 30 days to find a mutually satisfactory solution for making such transactions legal, or avoid such deduction or withholding. If at the expiration of such period, no mutually acceptable solution can be found, each of the Parties (in the event

of illegality) or the Party receiving an amount less than that provided for (in the event of deduction or withholding on an amount paid by the other Party) shall have the right by notice to the other Party to terminate the Transactions affected by the Change in Circumstances. Such notice shall specify the applicable Termination Date.

7.2.3 In the event of the occurrence of a Change in Circumstances mentioned in Article 7.2.1.2, all Transactions shall be deemed to be affected. The other Party (the 'Non-Affected Party') shall be entitled, by notice given to the Affected Party, to suspend performance of payment and Delivery obligations and to terminate all the outstanding Transactions between the Parties, irrespective of their place of conclusion or performance. Such notice shall specify the applicable Termination Date.

7.2.4 If a Change of Circumstances results directly in the occurrence of an Event of Default, such Event of Default shall be deemed not to have occurred and only the provisions of Article 7.2 shall apply.

## 7.3 EFFECTS OF TERMINATION

The Parties shall no longer be bound, with effect from the Termination Date, to make any payment or Delivery under terminated Transactions. Termination shall result in the obligation in respect of such Transactions, to make payment of the Settlement Amount and, when it results from the occurrence of an Event of Default, to reimburse the expenses referred to in Article 11.5.

## ARTICLE 8 - CALCULATION AND PAYMENT OF SETTLEMENT AMOUNT

### 8.1 CALCULATION OF SETTLEMENT AMOUNT

8.1.1 In application of the general principle relating to the determination of the Settlement Amount, the Replacement Value for each terminated Transaction, shall be determined together with, if appropriate, the Amount Due by each Party in respect of such Transaction. Replacement Values and Amounts Due shall be determined by the Non-Defaulting Party or the Non-Affected Party (or if there are two Affected Parties, by each Party). Such determination shall be made as soon as possible.

8.1.2 In order to determine the Settlement Amount for all terminated Transactions, the Party responsible for the calculation shall deduct from the total of the positive Replacement Values and the Amounts Due by the other Party the total of the negative Replacement Values and the Amounts Due by it. The difference (positive or negative) shall be the Settlement Amount.

**8.1.3** Any Replacement Value or Amount Due denominated in a Currency other than the Termination Currency shall be converted into such Currency at the Termination Date on the basis of the spot rates available to the Party responsible for the calculation at 12 noon on such date.

## **8.2 NOTIFICATION AND PAYMENT OF SETTLEMENT AMOUNT**

**8.2.1** The Party responsible for calculation of the Settlement Amount (or if there are two Affected Parties, each Party) shall notify as soon as possible to the other, the amount together with details of the calculation by which it was determined. Such calculations shall be conclusive upon notification and, in the absence of manifest error, shall be binding.

**8.2.2** If termination occurs following an Event of Default (or a Change in Circumstances where there is only one Affected Party), the Settlement Amount shall be due by the Defaulting Party or the Affected Party to the other Party, if it is positive, and shall be due by the other Party to the Defaulting Party or the Affected Party if it is negative.

**8.2.3** If termination occurs following a Change in Circumstances and there are two Affected Parties, the Party with the Settlement Amount in a larger negative or a smaller positive amount will pay to the other Party an amount equal to the mean of the absolute values of the Settlement Amounts (if these amounts have opposite signs) or equal to half the difference between the Settlement Amounts (if such amounts have the same sign).

**8.2.4** The Party owing the Settlement Amount (or amount mentioned in Article 8.2.3, as the case may be) shall pay it to the other Party within three Business Days from receipt of the notice mentioned in Article in 8.2.1. In the event that the Settlement Amount is due by the Non-Defaulting Party to the Defaulting Party following the occurrence of an Event of Default, the Non-Defaulting Party shall be irrevocably authorised to set-off such amount against any other amount due to it by the Defaulting Party in respect of any dealings between the Parties.

**8.2.5** In the event of delay in payment, interest, calculated in accordance with the provisions of Article 9.1 shall be added to the Settlement Amount (or the amount mentioned in Article 8.2.3, as the case may be).

## **ARTICLE 9 - LATE PAYMENT OR DELIVERY**

**9.1** In the event of a delay in payment by one of the Parties of an amount due under the Agreement, such Party shall pay to the other default interest which shall be due without notice, and which shall be calculated on such sum from and including the date on which the payment should have been made to but excluding the date of effective payment, at the overnight refinancing rate of the Party entitled to receive the relevant amount, in the relevant Currency, plus one per cent. per annum. Interest shall be capitalised if due for a period in excess of a year.

**9.2** In the event of late Delivery of any Underlying Asset by one of the Parties under this Agreement, such Party shall pay to the other:

– the amount of the difference, if any, between the Market Value of such Underlying Asset at the date on which the Delivery should have taken place, and the value of such Underlying Asset specified as at such date in the relevant Confirmation; and

– default interest on such difference calculated in the manner set out in Article 9.1 up until the date of effective Delivery.

## **ARTICLE 10 - TAX ASPECTS**

The Parties shall agree in a separate schedule, if appropriate, on provisions relating to the tax aspects of Transactions.

## **ARTICLE 11 - MISCELLANEOUS**

### **11.1 NOTICES**

Any notice given pursuant to this Agreement shall be made by letter, telex, telefax or any system of remote transmission considered by the Parties to be sufficiently reliable, and shall have effect as of the date on which it is received.

### **11.2 PAYMENT IN A CURRENCY OTHER THAN THE AGREED CURRENCY**

If for any reason a payment is made in a currency other than the agreed Currency for a Transaction and there is a difference between the amount converted into such Currency and the amount in such Currency provided for by the Transaction, the Party owing the amount shall, as an independent obligation, indemnify the other Party on demand against all costs and losses arising, without being entitled to raise any defence.

### **11.3 NON-WAIVER**

The non-exercise or late exercise by a Party of any of its rights, powers or privileges arising under this Agreement shall not be deemed a waiver of such rights, powers or priorities.

### **11.4 ASSIGNMENT TO A THIRD PARTY**

This Agreement, each Transaction and each of the rights and obligations thereunder shall not be transferred or assigned to any third party by either Party without the prior written consent of the other Party.



**11.5 COSTS AND EXPENSES**

The termination of transactions shall entitle the Non-Defaulting Party to the repayment of evidenced costs and expenses, including legal costs, incurred as a result of the occurrence of an Event of Default.

**11.6 SECURITY AND MARGIN**

The Parties may agree at any time to provide for any security or margin, in cash or securities, in respect of Transactions.

**ARTICLE 12 - TERM OF THE AGREEMENT**

The Agreement shall be concluded for an indeterminate period. It may be terminated at any time, by registered letter with acknowledgement of receipt; such termination shall take effect on the date which falls five Business Days after its receipt. The Agreement shall remain in force between the Parties in respect of all Transactions entered into prior to the termination becoming effective.

**ARTICLE 13 - WAIVER OF IMMUNITY**

This Agreement constitutes a commercial agreement. The Parties hereby irrevocably waive any immunity from suit or execution to which they would otherwise be entitled in respect of themselves or their assets, present or future.

**ARTICLE 14 - GOVERNING LAW - JURISDICTION**

This Agreement shall be governed by French law. In the event of translation, only the signed version shall be authoritative.

Any dispute relating to, without limitation, its validity, interpretation or performance shall be subject to the jurisdiction of the courts within the district of the Paris Court of Appeal.

Made in  
On

By:

By:

Name and Title:

Name and Title:

**SCHEDULE**

**AMENDMENTS TO THE MASTER AGREEMENT**

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