

## TERMS AND CONDITIONS FOR THE USE OF THE TRADITION TRADSWITCH SYSTEM

Please carefully read these terms and conditions (the "Terms"), which will govern the use of the Site by you and each User. In order to use this Site each User must agree to be bound by the Terms, and evidence this either by clicking the 'accept' button when logging into the system or by submitting order on a worksheet which contains these terms.

### Definitions

In these Terms, unless the context requires otherwise, the following words shall have the following meanings:

'Content' means all information contained on the Site in any form including without limitation any and all text, audio, video, graphics, images, photographs, data, databases, software and/or advertisements;

'Customer' means the User entity (corporation, partnership, joint venture or otherwise) which is entering in to these Terms in order for its employees and agents to Use the Site as Users;

'Custom Pages' means those pages of the Site which Users can amend;

'Individual User' means individual persons using the Site including without limitation employees, partners and independent contractors of a Customer;

'Site' means any URL that facilitates access to the Tradition TRADSWITCH System;

'System' means TRADSWITCH

'TRADITION' means Tradition (Asia) Ltd. as being the entity providing access to Users;

'TRADSWITCH' means TRADITION's position matching engine and the electronic platforms made available to access the matching engine for order submission.

'You' or 'User' means each person or entity (including without limitation Individual Users and Customers) entering into these Terms in order to use the Site and /or System.

### Terms

#### 1. General

1.1 The User and Customer acknowledge and agree that any and all intellectual property rights which may subsist in the Site and/or the Content are owned by and shall remain the property of TRADITION or its licensors. These intellectual property rights include without limitation copyright, trademarks, service marks, trade names, the underlying software, the design, graphics, layout, look, feel and structure of the Site, database rights, design rights, domain names, and rights to goodwill and/or to sue for passing off. No material from this Site may be copied, reproduced, republished, uploaded, posted, transmitted, or distributed in any way, without the express written permission of TRADITION. Each Individual User and each

Customer warrants that the Individual User has the authority to enter into this agreement with TRADITION on behalf of the Individual User and the Customer.

1.2 These Terms will apply to all future uses of this Site by Users unless specifically otherwise agreed in writing. TRADITION may, at its discretion, change, modify, add or remove these Terms at any time. Where TRADITION believes that such an action will significantly impact upon your use of the Site we will make reasonable endeavors to use proportionate and reasonable methods to update you of such a change but in any event please check the Site periodically for any and all changes to these Terms. Your continued use of the Site and/or any other Tradition system following the posting of changes to these Terms will constitute your acceptance to those changes, whether or not you have actual notice of changes made.

1.3 If a Customer or Individual User fails to maintain all necessary licenses and consents required for the use of this Site, or required to trade with TRADITION, then such Customer and/or Individual User (as applicable) shall inform TRADITION immediately and TRADITION is authorized by the Individual User and the Customer, respectively, to take all necessary action to prevent the Individual User and/or Customer from continuing to have access to and use of the Site. If TRADITION takes such steps, the Customer and the Individual User agrees that TRADITION shall not be liable for any loss or damage sustained as a result of such action.

1.4 TRADITION may, without notice and at any time, amend or suspend the transmission of Content through this Site and/or suspend or terminate your access to and use of the Site.

1.5 The Customer and each User irrevocably authorizes TRADITION and/or its duly authorized agent(s) to carry out such investigations as TRADITION may reasonably require in order to ensure that the User and the Customer are respectively complying with these Terms. Without limiting the generality of the foregoing, the Customer authorizes TRADITION and/or its duly authorized agent(s) to have access to the Customer's records, books of account, and other records as reasonably required by TRADITION in order to establish whether the Customer is complying with these Terms.

1.6 To the extent that it is required by the Customer and/or the User, for the bona fide use of the TRADSWITCH, TRADITION hereby grants to the Customer and/or the User (as applicable) a revocable, non-exclusive, non-transferable license to access and use the Site solely for the purpose of:

Viewing its Content (and adjusting the way in which it views Content via the Whiteboard); and  
Submitting orders to Tradition in accordance with the (general) dealing terms and conditions which are available on [www.traditionasia.com](http://www.traditionasia.com);

subject to and in accordance with these Terms (the "License"). TRADITION may revoke the License with immediate effect and without penalty at any time in its discretion. The License granted shall be for the sole purpose of pricing credit, interest rate and foreign exchange derivative and cash instruments and for the users to submit orders to Tradition in the same instruments and to the extent only as is necessary to use the Site for such purpose.

1.6 All bids and offers entered onto the System shall be subject to the General Dealing Terms and Conditions and as such Users may instruct Tradition to enter, remove, amend or submit Orders on the TRADSWITCH on their behalf and that instructions shall be effective only when entered onto the System.

1.7 The User undertakes to complete any and all transactions matched by TRADSWITCH, transactions which will be with other Users of the TRADSWITCH and customers of Tradition. Tradition is acting as a Broker at all

times and as such after the Confirmation of Transaction is issued by Tradition, Tradition's role in the Transaction ends and the transaction shall be then be completed by the counterparties and governed by standard documentation agreed between the counterparties, or as otherwise agreed by the counterparties as with any other trade brokered by Tradition on a name give up basis.

1.8 The User is responsible for all fees, costs and expenses associated with its access to and use of the System and the execution and settlement of Matched Orders (including, commissions, telecommunications, modems and other connectivity costs, and costs of any third party software, equipment and any related maintenance services).

1.9 TRADITION may terminate these Terms (in whole or in part) at any time, and with immediate effect, by notice in writing to the Customer.

## **2. Liability**

2.1 These Terms do not exclude or in any way limit liability for fraud, death, or personal injury caused by negligence and/or any liability to the extent the same may not be excluded or limited as a matter of law.

2.2 Subject to clause 2.1, to the extent permissible by law TRADITION's entire liability in respect of any direct or indirect losses howsoever arising and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise arising out of or relating to its obligations under these Terms and/or to the use by any party of the Site, including without limitation any trade undertaken in connection with the use of this Site shall be limited to the total fees (if any) paid by Customer under these Terms in the twelve month period preceding the date of the relevant claim.

2.3 Subject to clause 2.1 and without prejudice to clause 2.2, TRADITION expressly excludes liability for any and all loss of profits, loss of business, loss of contracts, loss of revenue, loss of management time, loss of goodwill or reputation, loss of damage to or corruption of data, wasted expenses, anticipated savings, or indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties to the Terms and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

2.4 Consumer statutory rights are excluded to the extent permissible by law.

2.5 The terms of this clause 2 are in addition to, and not in derogation of, the effect of the disclaimers which appear on the Site from time to time.

2.6 The Customer agrees that the Terms, and not only this clause 2 in particular, have been drafted to reflect the standard manner of trading in the industry, the level of fees and charges made by TRADITION for the work done, and the fact that TRADITION does not carry insurance in respect of potential loss and damage arising (specifically on the basis of both of avoiding increased cost to the Customer together with industry practice). The Customer also accepts and agrees that it is in the best position to consider and evaluate any loss that it may suffer as a result of entering into this agreement or any trade in association with TRADITION, and these Terms reflect that fact.

## **3. Indemnities**

3.1 The Customer shall fully indemnify and hold TRADITION harmless from and against any and all claims, demands, actions, liabilities, costs, expenses (including without limitation legal expenses), loss and damage threatened against or suffered by TRADITION arising out of or relating to:

3.1.1 any infringement or alleged infringement of any intellectual property right existing in relation to the use or misuse of the Site;

3.1.2 any breach of the License; and/or

3.1.3 the use or misuse of the Site, including without limitation use or misuse of TRADSWITCH and/or Login Details (defined below) whether or not the Customer authorized, consented to, or was aware of such use, misuse or other activity.

#### **4. Access and Confidentiality**

4.1 Each Individual User must enter a unique username and secure password (“Login Details”) in order to access the TRADSWITCH. Login Details are personal to each Individual User and the Customer and each Individual User shall ensure that no person other than the applicable Individual User uses the Login Details to access the TRADSWITCH. Customers shall promptly notify TRADITION of any breach of security with regard to Login Details or any improper use of the same. A breach by any Customer’s Individual User of any provision of these Terms will constitute a breach by the Customer.

4.2 All Login Details and all Content contained on the Site which is not generally publicly available, or which requires the use of a password in order to access such Content, or which is in any way related to know-how, methods, processes, designs, products, development work, marketing, customer names, prospective customer names, pricing, business data, finance, trade secrets, dealings, transactions or affairs of TRADITION or its associated companies is “Confidential Information”. All Confidential Information shall be deemed to be the property of TRADITION and the User undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorized access, and not at any time to use or authorize or permit the use of, or disclose, exploit, copy, modify any Confidential Information, or authorize or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations under and in accordance with these Terms. The following categories, however, shall not be considered to be Confidential Information for the purposes of this clause:

4.2.1 information which is or enters into the public domain through no fault or act of the receiving party;

4.2.2 information which is required to be disclosed by law.

#### **5. Editing the Site**

5.1 TRADITION may, without notice, refuse to post or transmit or may remove, edit, delete, amend or alter in any way any part or whole of the Site at its sole discretion.

#### **6. Exclusion of Warranties**

6.1 Although TRADITION attempts to ensure that Content is accurate, this Site is provided “as is” and on an “as available” basis and may not be accurate or up to date. Content may or may not have been prepared by TRADITION but is made available without responsibility on the part of TRADITION. TRADITION does not guarantee the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Content contained on, distributed through, streamed, linked, downloaded or accessed from the Site. Subject to clause 2.1, no responsibility is accepted by or on behalf of Tradition for any errors, omissions, or inaccuracies in the Content.

6.2 TRADITION does not represent or warrant the quality, availability, right to use, ownership or reliability of any of the Content which a User of the Site may see or use. Any dealings with any other site operators shall be on the terms (if any) of that third party operator.

6.3 No action should be taken or omitted to be taken on the basis of the Content. Any reliance you place upon any of the Content in the Site will be at the sole risk of the Individual User and/or Customer. TRADITION is not selling or offering for sale any products or services outlined or described on the Site nor is it acting as agent of any person selling or offering for sale any products or services described in the Content.

6.4 Except as explicitly stated to the contrary in these Terms, the User hereby acknowledges and agrees that TRADITION disclaims to the extent permissible by applicable law any and all warranties, conditions, representations and terms, whether express or implied by statute, common law or otherwise, with respect to the Site including without limitation warranties of satisfactory quality, merchantability and fitness for a particular purpose, non-infringement, compatibility, security, accuracy and/or any similar or equivalent warranty.

## **7. Restrictions on use of the Site and of the TRADSWITCH**

7.1 Each Individual User and the Customer shall:

7.1.1 abide by all applicable laws, regulations and codes of conduct and be solely responsible for all things arising from your use of this Site and/or your dealings with TRADITION;

7.1.2 not infringe any third party rights, including without limitation the intellectual property rights of others. They shall not use any trademarks or other intellectual property rights of TRADITION, or in any way represent a connection with TRADITION or link to this Site or the TRADSWITCH in any manner whatsoever without express prior written consent;

7.1.3 not damage, interfere with or disrupt this Site or do anything that may interrupt or impair its functionality or cause disruption to the general business of TRADITION or its associated companies;

7.1.4 not obtain or attempt to obtain unauthorized access, through whatever means, to the Site or any information or services provided in connection with the Site, or to computer systems operated by TRADITION;

7.1.5 not publish, or otherwise transmit any defamatory, offensive, obscene, or unlawful material through or in connection with this Site;

7.1.6 not post to or use the Site to distribute or send any illegal material of any kind, including, but not limited to, illegal material in the form of text, graphics, video, programs or audio files;

7.1.7 not threaten, harass, stalk, abuse, disrupt or otherwise violate the rights of others, including rights of publicity and privacy through or in connection with the Site;

7.1.8 not misuse the Site by introducing viruses, Trojans, worms, logic bombs or other material which is malicious or technologically harmful;

7.1.9 not use this Site for distributing, disseminating or posting any chain letters, junk mail, 'spamming' material or any other form of bulk communication; and

7.1.10 not assign these Terms without the written consent of TRADITION.

## **8. Links**

8.1 From time to time TRADITION may make available links from the Site to other sites. These will not necessarily be in any way approved, checked, edited, vetted or endorsed by TRADITION. TRADITION shall not be responsible or liable in any way for the content, advertising or products available from such sites, the quality, functionality, suitability or legality of such sites or for any dealings, or the consequences of such dealings, with other site operators. Any dealings with other operators shall be on the terms and conditions (if any) of those operators. The Customer waives any claim it may have against TRADITION with respect to such sites. The Customer agrees to indemnify and hold harmless TRADITION from and against any and all claims, actions, liabilities, losses, damages, costs, and expenses (including without limitation legal expenses) suffered or incurred by Tradition in relation to such dealings. Any arrangements made with any other party and the Customer are the sole responsibility of the Customer.

8.2 Other parties may not link or deep link to this Site without the express consent of TRADITION. However, if that does occur, TRADITION is not liable for any dealings with these unauthorized sites or any content which may be displayed or linked to by these third parties.

## **9. Privacy Policy**

We process information about you in accordance with our privacy policy. Our privacy policy forms part of these Terms and contains details on the types of information we collect, what we do with that information and other related matters such as cookies. Our privacy policy is available on [www.traditionasia.com](http://www.traditionasia.com)

## **10. Miscellaneous Provisions**

10.1 TRADITION may assign its rights and obligations under these Terms and upon any such assignment TRADITION will be relieved of any further obligation to the Customer hereunder.

10.2 Any failure to exercise any particular right or provision of these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by TRADITION to you in writing.

10.3 TRADITION reserves the right to vary these Terms from time to time.

10.4 No representation or warranty has been made by or on behalf of TRADITION which induced or intended to induce the Customer to enter into this agreement. These Terms constitute the entire agreement between the parties.

10.5 TRADITION shall not be liable for any delay or failure to fulfill any obligation under these Terms to the extent such delay or failure was due to an event beyond Tradition's reasonable control.

## **11. Governing Law and Jurisdiction**

11.1 These Terms and any dispute arising out of or in connection with them or the service provided by TRADITION hereunder are governed exclusively by and construed in accordance with the Hong Kong law and the parties hereby submit to the jurisdiction of the Hong Kong courts.

11.2 Should any Customer be entitled by the law of any foreign jurisdiction to commence proceedings of any nature other than in accordance with the provisions of this clause 11, the Customer hereby irrevocably abandons such rights in the context of these Terms or its relationship with TRADITION and consents irrevocably to any such proceedings being stayed or dismissed.

11.3 If any provision of these Terms is held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part then insofar as such provision is severable from the remaining provisions, it shall be deemed omitted from the Terms and shall in no way affect the legality, validity or enforceability of the remaining provisions (and, if applicable, the remainder of the provision in question).