

METALS AND SOFT COMMODITIES MODULE

1. SCOPE

- 1.1 **Transactions:** The clauses in this Module apply to Transactions in commodities. For these purposes, "**Transaction**" means a transaction relating to, or under the terms of which delivery is contemplated of, any base metal, precious metal or agricultural product.
- 1.2 **Netting:** Any Transaction to which this Module applies shall be deemed included in the definition of "Netting Transaction" for the purposes of this Agreement and subject to termination and liquidation under the clause headed "Netting" following an Event of Default.

2. MARKET DISRUPTION

- 2.1 In the event of severe market disruption and/or price volatilities which may result or may have resulted in the current market value of a commodity which is the subject-matter of any outstanding Transaction moving to an unusual level, we reserve the right to take one or more of the following courses of action:
- (a) to close out any Transaction where significant loss has occurred or is expected by us;
 - (b) to require an immediate delivery of additional commodity;
 - (c) to decline to renew maturing, or enter into new, Transactions.
- 2.2 Business on a Market may from time to time be suspended or restricted in the interests of, inter alia, maintaining a fair and orderly market. In such circumstances we may be unable to enter into or close out Transactions.

3. TITLE AND QUALITY

- 3.1 **Title Guarantee:** You covenant that you will deliver all commodities with full title guarantee. Without limitation any transfer of a commodity pursuant to a Transaction shall be free of any right of retention, pledge, lien, other encumbrance or any other third party right including a warehouse's lien.
- 3.2 **Representation:** You represent and covenant that there is no encumbrance, nor will you create or permit to exist any encumbrance in respect of any commodity which is in our possession or delivered to us by you under any Transaction. You repeat this representation as of the time of entry into any Transaction relating to any commodity.
- 3.3 **Passing of title:** Property in any Warrant-based Commodity shall pass at the time the Warrant is delivered. In any other case, unless otherwise agreed in writing, property shall pass upon delivery of the commodity. Notwithstanding the foregoing, in any Transaction under which we sell a commodity to you, property in the commodity shall remain with us until we have received full payment for it.

3.4 **Quality:** Unless otherwise agreed, any commodity to be delivered under a Transaction shall be delivered in accordance with the requirements of applicable Market rules or the market by reference to which such commodity is described.

3.5 **Statutory conditions:** When we transfer a commodity to you all statutory and implied conditions and warranties as to title, correspondence to description, quality and fitness for purpose are excluded.

4. **DELIVERY**

4.1 **Delivery:** Delivery of any Warrant-based Commodity shall be effected by transfer of Warrants. Where we hold Warrants in our physical possession for you, delivery by you to us shall be effected by our appropriating the requisite number and amount of Warrants. Delivery by us to you of any Warrant-based Commodity where we hold Warrants in our physical possession shall be effected by us immediately segregating the requisite number and amount of Warrants held by us, after which we shall hold them and (insofar as within our control) the commodity to which they relate to, to your order.

4.2 **SWORD deliveries:** Where Warrants are capable of being held in SWORD, transfer of Warrants shall be effected by transfer to or from our SWORD account. If you do not have a SWORD account, and we hold your Warrants in our client account in SWORD, transfer of appropriate Warrants from our client account shall constitute delivery. In any other case where we hold your Warrants in SWORD, and subject to contrary written agreement between you and us, transfer to us shall be deemed to occur at 10am London time on the prompt date applicable to the Transaction.

4.3 **Risk:** The risk in any commodity bought by you will pass to you on delivery. Where a commodity is in your possession before the property in it has passed to you, you agree fully to preserve, or procure the full preservation of, its condition and make good any damage or deterioration that may occur, or fully compensate us for any such damage or deterioration.

4.4 **Delivery Costs:** Unless otherwise agreed in writing between us, any costs incurred by us in effecting physical delivery of any commodity (including, without limitation, costs in respect of collection, packaging, shipment, storage, warehousing or insurance) shall be borne by you.

4.5 **Place of Delivery:** Any commodity which is required to be delivered physically by you to us will be delivered by you at your expense to such location as we may specify.

5. **CUSTODIANSHIP**

5.1 **Commodities purchased by you:** We may, from time to time, at your request but in our discretion, agree to hold on your behalf any commodity or documents of title to commodities which you have acquired from us pursuant to a Transaction. Such commodity or documents will be segregated from any like commodity or documents in our ownership but otherwise will be subject to the same custody and insurance arrangements as our own property. We shall owe you no fiduciary duty in respect of any such commodity or documents and our responsibility shall be limited to taking

reasonable care to restore such commodity or documents to you upon your giving us reasonable notice. We reserve the right to make a reasonable charge for this service.

5.2 ***SWORD Warrants:*** Where a Warrant is capable of being held in SWORD we shall hold such a Warrant physically for you only for temporary periods. We may give you reasonable notice to collect any such Warrants or to cause them to be lodged in SWORD in accordance with the SWORD Regulations.

5.3 ***Collection of Warrants:*** Where you have Warrants which are in our physical possession and have authorised a person to collect Warrants from us, we shall not verify the identity of any person claiming to be so authorised, and we owe you no duties to operate any specific security procedures unless separately agreed in writing between you and us.

5.4 ***Rent:*** You will in due time pay rent and other charges applicable to any commodity represented by any Warrant held by us for you.

5.5 ***Liability:*** Our liability to you in respect of any Warrant held by us for you is limited as follows: we shall have no liability for any damage, loss, expenses or liability of any nature which you may suffer as a result of any act or omission by us except to the extent of direct losses or expenses attributable to our fraud or wilful default [or negligence]. [In the event of such direct losses or expenses our liability is limited to [issuing an indemnity in respect of] the market value of the Warrant at the time of discovery of the loss.]

5.6 ***Storage and Insurance:*** If you deposit commodities, documents of title to commodities, or other tangible assets with us as margin or otherwise, we reserve the right (but have no obligation) to insure them, to charge you and debit your account with the costs of storage and insurance either periodically or when we return the assets to you, and to refuse withdrawal until such costs have been paid. If we collect, deliver or hold commodities or other tangible assets on your behalf, we do so at your risk.

6. **HOLDING YOUR WARRANTS IN SWORD**

6.1 ***Bailment:*** Where you do not have a SWORD Account we may hold Warrants on your behalf in SWORD. If we do so we act as bailee and owe you no fiduciary duty, and we do not undertake the responsibilities of a trustee or any other duties in relation to such Warrants not implied by the law of bailment.

6.2 ***Warrant lodgment:*** You consent for the purposes of the SWORD Regulations to us lodging Warrants with the Depository and to our dealing with the Warrants on the terms of the SWORD Regulations. Where we have lodged a Warrant on your behalf, you represent and warrant to us that the Warrant and the commodity to which it relates are beneficially owned by you and free of encumbrances and that all requirements of the SWORD Regulations for lodgement are satisfied.

6.3 ***Warrant withdrawal:*** If you wish to withdraw Warrants which we are holding for you in SWORD, you will give us reasonable notice to enable us to comply with the SWORD Operating Procedures, and we shall not be responsible other than to take reasonable steps to comply with your request insofar as it is practicable.

7. **INTERPRETATION**

In these terms:

"**SWORD**" means the system for electronic transfer of entitlement to Warrants of certain descriptions regulated by the LME;

"**SWORD Regulations**" means the LME's regulations governing the operation of SWORD, and unless otherwise expressly defined, any term defined in the SWORD Regulations has the same meaning;]

"**Warrant**" means a warehouse warrant issued in circumstances regulated by a Market which evidences entitlement to a commodity;

"**Warrant-based Commodity**" means a commodity which, under the rules of a Market, is capable of being delivered by transfer of a Warrant.