



**HELVEA**

**Helvea Limited**

*Authorised and regulated by the Financial Services Authority in the United Kingdom*

**GENERAL TERMS AND CONDITIONS**

for

**PROFESSIONAL CLIENTS**

## **1 OUR PARTICULARS**

Our full company name is Helvea Limited. We are registered in England and Wales with Company Number 04935018 and the address of our registered office is 5 Royal Exchange Buildings, London, EC3V 3NL. We are authorised and regulated by the Financial Services Authority (“FSA”) in the United Kingdom. Please read this document with care as you will be deemed to have accepted its contents once we begin to provide services for you.

## **2 SERVICES WE MAY PROVIDE**

- (a) We may provide services in transactions involving the following investments:
- (i) shares in Swiss and non-Swiss companies;
  - (ii) debenture stock, loan stock, bonds, notes, certificates of deposit, commercial paper or other debt instruments, municipal and corporate issues;
  - (iii) warrants to subscribe for investments falling within (i) and (ii) above;
  - (iv) depositary receipts or other types of instruments relating to investments falling within (i), (ii) or (iii) above;
  - (v) futures and contracts for differences on commodities, securities, interest rate and debt instruments, stock or other indices and currencies;
  - (vi) spot and forward currencies;
  - (vii) options to acquire or dispose of any of the instruments listed above;
  - (viii) other instruments which are similar or related to any of the foregoing;
  - (ix) such other instruments as may be agreed between us from time to time.
- (b) These services will be provided on the basis that you are a professional client in relation to the above investments.
- (c) Subject to (d) below, our role will be restricted to passing your order to Helvea SA and indirectly to Société Générale Securities Services Switzerland (hereinafter “SG”) for execution, clearing and settlement on an execution only basis. The execution, clearing and settlement of all transactions the subject of this Agreement will be undertaken by either Helvea SA or SG in accordance with their terms of business. Helvea SA or SG, as

appropriate, will be responsible for sending you trade confirmations and account statements.

- (d) We will, if requested, provide you with research materials and trading suggestions on those investments listed at clause 2(a). You represent that you have sufficient knowledge and experience to judge the suitability of any advice we give you taking into account the merits and risks of any suggested transactions.
- (e) You acknowledge and confirm that you will not be relying on us to advise you or exercise any judgment on your behalf as to the tax consequences of any transaction we may enter into for you. Neither we, nor any of our employees, officers, directors, appointed representatives or agents, hold ourselves out as having any tax expertise whatsoever.

### **3 INTRODUCTION OF BUSINESS; ASSOCIATED COMPANIES**

- (a) You hereby authorise us to introduce you and pass your orders to Helvea SA and indirectly to SG. You hereby authorise us and our associated companies to introduce you to firms which are members of exchanges of which we or our associated companies are not members. Such companies may or may not be associated with us.
- (b) Neither Helvea SA nor SG are authorised and regulated by the FSA in the UK. You may not therefore receive the same protections as would be available from a company that is authorised and regulated by the FSA in the UK.

### **4 CHARGES**

- (a) We will not charge you commission directly for the brokerage services we provide to you.
- (b) Helvea SA will charge you a commission on each transaction they execute or that SG executes or settles on your behalf in accordance with their terms of business and we will receive a percentage of that commission from them.

### **5 INSTRUCTIONS; TELEPHONE RECORDING, BEST EXECUTION, AGGREGATION ETC.**

- (a) You, any person notified to us in writing as being authorised by you, or any person whom we believe in good faith is properly authorised by you, may give us oral or written instructions (which for this purpose shall include electronic mail and telefax) on your behalf concerning any transaction or proposed transaction. You agree that we shall be entitled to rely on, and you shall treat as binding upon you, any order or instruction (whether or not subsequently confirmed in writing) which we reasonably believe to have been given by you or on your behalf and which we have accepted in good faith. You agree to be solely responsible for, and to indemnify us on demand in respect of, your and

your employees' and agents' errors in instructions and for the lack of any person's authority to provide us with such instructions.

- (b) We may record telephone conversations between us without the use of a warning tone to ensure that your instructions are promptly and accurately recorded.
- (c) In relation to any transactions, we or any associated company shall have the right at any time to (i) refuse to act on your instructions; or (ii) act on your instructions but only on such conditions as we deem appropriate for our or our associated companies' protection. We or any of our associated companies may at our or their sole discretion refuse any instruction without giving reasons for the refusal and we shall not be responsible to either you or any third party for any loss incurred as a result of such a refusal.
- (d) Communications sent to you at the address provided by you shall be deemed to have been personally delivered to you and you agree to waive all claims resulting from failure to receive such communications. Communications from you to us shall be sent to us at the address set out in clause 1 above or such other address as we may notify to you from time to time.
- (e) Your orders will be executed in accordance with the Helvea Order Execution Policy, a copy of which will be provided to you separately. Where necessary, we have separately sought your consent to execute your orders outside of a regulated market or multi-lateral trading facility (as defined in the FSA Rules). Subject to having received such consent from you where required by FSA Rules and applicable guidance, you agree that, whenever you place an order with us, we shall be entitled at our absolute discretion and without reference to you, to select the medium for executing your order and any related transactions we enter into as a result of your order, including, for the avoidance of doubt, multi-lateral trading facilities (MTFs). Unless otherwise agreed by us, neither the medium we select nor the costs or charges we may or may not incur in relation to any such transactions will have any impact on the fees payable by you to us.
- (f) You agree that your orders may be aggregated with our own orders, orders of our associated companies and persons connected with us including our employees and orders of other customers. Although orders will only be aggregated where we reasonably believe this to be in the overall best interests of our customers, aggregation may on some occasions result in the obtaining of a less favourable price than separate order execution.

## **6 CONFLICTS OF INTEREST**

- (a) Your attention is drawn to the fact that when we provide you with services under this Agreement, we, or an associated company, may have an interest that is material in relation to the transaction concerned or could give rise to a conflict of interest. You agree

that we should continue to act for you in such circumstances without being required to disclose the material interest or potential conflict to you.

- (b) Please refer to the Helvea Conflict of Interest Policy for specific information about how we manage conflicts.

## **7 CUSTOMER WARRANTIES AND REPRESENTATIONS**

- (a) You warrant and represent that in connection with this Agreement and each transaction carried out pursuant to it that: (a) you are a professional client as defined in the FSA rules; (b) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and each such transaction and the persons entering into this Agreement and each such transaction on your behalf have been fully authorised to do so; (c) all investments or other property to which this Agreement and each such transaction relates shall, at all times be free from any charge, lien, pledge or encumbrance and, unless you are a trustee, shall be beneficially owned by you or your principal; (d) this Agreement and each such transaction are binding on you and enforceable against you in accordance with their terms and do not violate any laws or regulations that are applicable to you or the terms of any agreements by which you are bound; and (e) you will provide us with such information as we require in relation to these Terms, including all information required to comply with all FSA Rules and all applicable anti-money laundering rules and regulations. You warrant that any information you have provided us is complete, accurate and not misleading in any material respect and in the event of any material change in the information you have provided us, you will promptly notify us.
- (b) Were you are acting as agent on behalf of another (whether disclosed to us or not), you represent and warrant that:
  - (i) you have full power and authority to instruct us upon these Terms; and
  - (ii) you have no reason to believe that such person will not be able to perform any settlement obligation thereunder; and
  - (iii) you have obtained and recorded evidence of the identity of such person or any underlying principal of such person.

You agree that you will be liable to us jointly and severally with your principal in respect of all obligations and liabilities arising therefrom.

You agree to provide to us written assurance that you have obtained and recorded evidence of the identity of any person on whose behalf you are acting or any underlying principal of such person and to pass to us such other information and written confirmations in relation to such underlying person as we reasonably require to allow us to comply with all applicable rules and, in particular, with applicable money laundering regulations.

## **8 CONFIDENTIALITY**

- (a) You acknowledge that, whilst we undertake to guard the confidentiality of information relating to your transactions, we may disclose information without prior reference to you to Helvea SA and SG, any of our associated companies, our professional advisers and,

where required by law or rules applicable to us or to our associated companies or pursuant to a request from any regulatory, governmental or similar body.

- (b) You also agree that we shall be under no obligation to pass to you any information we receive from any third party where to do so would place us in breach of any express or implied duty of confidentiality to such third party.

## 9 INDEMNITY AND EXCLUSION OF LIABILITY

- (a) Neither we nor our officers, employees, contractors, sub-contractors and outsourcing partners or our associated companies or their officers, employees, contractors, sub-contractors and outsourcing partners shall be liable for any losses, costs, liabilities, expenses, claims or damages (together "**Losses**") suffered by you in relation to any of the services performed by us or by Helvea SA or SG pursuant to this Agreement other than Losses arising directly as a result of any negligence, fraud or wilful default on our part. In no event shall we or our officers, employees, contractors and sub-contractors or our associated companies or their officers, employees, contractors and sub-contractors be liable for special, indirect or consequential damages of any kind, even though such person may have been informed about the possibility of such loss.
- (b) You shall fully indemnify us, our associated companies and our and their officers, employees, contractors and subcontractors on demand and keep all such persons indemnified against all Losses which may be incurred directly or indirectly by reason of or in consequence of acting in connection with this Agreement, save to the extent that such Losses arise directly as a result of our negligence, fraud or wilful default.
- (c) Nothing in this Agreement shall, however, exclude or restrict any duty or liability owed by us to you under the Financial Services and Markets Act 2000 or the UK regulatory system.

## 10 DATA PROTECTION

We, and where relevant our associated companies, will act as data controller and, in certain circumstances, data processor within the meaning of the Data Protection Act 1998 (the "**Data Protection Act**"). You hereby consent to the processing and use by us, and where relevant our associated companies, and our (or our associated companies') agents of personal data (as defined in the Data Protection Act) given by you under this Agreement which may include the transfer of such data out of the European Economic Area (as defined in the Data Protection Act). You hereby undertake to supply personal

data to us and our associated companies in accordance with the provisions of the Data Protection Act.

- (a) Any information that relates to you which you provide may be held by us, an associated company or by sub-contracted third parties on our behalf. The data may be used for administration or for market research purposes.

## **11 CHANGES**

- (a) We may change these arrangements (including the terms of this Agreement) by sending you a written notice which will become effective on a date to be specified in the notice which will (normally be at least ten business days) after the notice is sent to you. This Agreement may be amended by us without obtaining the consent of any other party which has any rights under it pursuant to the Contracts (Rights of Third Parties) Act 1999.
- (b) In the event that an exchange or clearing house takes any action which affects a transaction executed pursuant to this Agreement, we or any of our associated companies may take any action which we, in our sole discretion, but acting in good faith (including, but not limited to, requiring any alteration in the terms or conditions of any contract effected by us as we consider desirable), deem necessary for our, or our associated companies' protection.
- (c) No amendment will affect any outstanding order or transaction or any legal rights or obligations which may already have arisen.

## **12 TERMINATION**

- (a) This Agreement may be terminated by either of us giving written notice (which shall for this purpose include telefax and electronic mail) to the other. Any notice of termination shall take effect on the date set out in the notice which shall be not less than seven days from the date of the notice.
- (b) No penalty will become due from either of us in respect of the termination of this Agreement.
- (c) The termination of this Agreement will not affect any outstanding order or transaction or any legal rights or obligations which may already have arisen.

## **13 FORCE MAJEURE**

- 13.1 We shall not be liable to you for any loss, cost, damage or expense sustained or incurred by you by reason of any one or more of the following: acts or restraints of governments or public authorities; war, revolution, riot or civil commotion; strikes, lock-outs or other industrial action, whether of our employees or others; blockage or embargo; failure of supplies of power, fuel, transport, equipment or other goods or services; any act or regulation of any of any

governmental or regulatory body including a change of law or regulation, damage to the premises or storage facilities by explosion, fire, corrosion, ionising radiation, radioactive contamination, flood, natural disaster, malicious or negligent act or accident; any destruction, temporary or permanent breakdown, malfunction, damage or failure of any transmission or communication or computer systems (including, but not limited to, computer systems utilised or available on, or in respect of any exchange, market, settlement, clearing or any third party system), and any other cause beyond our control.

## **14 GENERAL**

- (a) Except for clause 12, which is enforceable by any of our associated companies and their officers, employees, contractors and sub-contractors, the terms of this Agreement shall not be enforceable by any person not a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- (b) We may assign, transfer or novate any of the rights or obligations under this Agreement to any other company by giving you notice which will specify a date upon which the assignment, transfer or novation will become effective. This date will be at least one week after the date of the notice. You will do all things that we may reasonably require to achieve such assignment, transfer or novation.
- (c) Each provision of this Agreement is severable and in the event of any provision becoming invalid or contravening any applicable laws, rules or regulations the remaining provisions shall continue to be binding on each of us.
- (d) No waiver of any provision of this Agreement, nor our failure to enforce the same, in any one or more instances shall be deemed a waiver.

## **15 COMPLAINTS AND COMPENSATION**

All formal complaints should in the first instance be made in writing to our Compliance Officer at the address stated in clause 1. Requests for information about whether you may also be entitled to compensation if we fail to meet our obligations as set out in this Agreement is available on request from the same address.

## **16 GOVERNING LAW AND JURISDICTION**

- (a) This Agreement shall be construed in accordance with the laws of England. If you have a claim against us in connection with this Agreement, such claim will be referred to the courts of England, the exclusive jurisdiction of which you hereby irrevocably submit. Nothing contained herein shall limit our right to initiate proceedings under this Agreement nor to seek enforcement of any order or award against you in any jurisdiction we deem appropriate and you agree to submit to the jurisdiction of any such court.

- (b) To the extent that you may be entitled in any jurisdiction to claim for yourself, or for your property or assets, immunity in respect of your obligations under this Agreement from service of process, jurisdiction, suit, judgment, execution, attachment (whether before judgment, in aid of execution or otherwise) or legal process or to the extent there may be attributed to you or to your property or assets such immunity (whether or not claimed), you hereby waive such immunity to the fullest extent permitted by the laws of such jurisdiction.
- (c) You hereby waive any objection to service of process made in accordance with English law to the address you have provided to us. Where you are an overseas person, you will appoint a person in the UK to accept service on your behalf. You are requested to provide us with that person's relevant details.

## 17 DEFINITIONS

“**Agreement**” means these General Terms and Conditions together with any Notification of Treatment as a Professional Client letter as amended from time to time.

“**associated company**” means:

- (a) a holding company (as defined by section 736 of the Companies Act 1985) of Helvea Limited; or
- (b) a subsidiary (as defined by the section 736 of the Companies Act 1985) of Helvea Limited or any subsidiary of a holding company of Helvea Limited; or
- (c) a company over which Helvea Limited or any holding or subsidiary company of Helvea Limited has control within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
- (d) any parent or subsidiary undertaking of Helvea Limited as defined by section 258 of the Companies Act 1985.

October 2007