



ICAP Terms of Business EMEA & Asia

with effect from
21 November 2008

ICAP provides voice and electronic brokerage, market information and post trade services to professionals in the international financial, commodities and shipping markets.

These terms of Business apply to services provided by ICAP Group Companies.
For more information see www.icap.com

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ICAP Terms of Business

This terms of business document together with its three Appendices and the Schedules as amended, supplemented or narrated from time to time (the "**Terms**") define the basis on which the relevant ICAP Group Company ("**ICAP**", "**we**", and "**us**") will provide you with certain services. These Terms incorporate our Execution and Order Policy ("**Execution Policy**"), as amended from time to time. We also refer you to the ICAP Regulatory Factsheet for Fund and Portfolio Managers ("**Factsheet**"). The current versions of our Execution Policy and Factsheet are available on our website at www.icap.com.

As these Terms are between you and the relevant ICAP Group Company, each such ICAP Group Company shall have an interest in, take the benefit of, and be bound by these Terms, as applicable. ICAP Group Company shall mean any Affiliate of ICAP plc where the term "**Affiliate**" shall mean, in respect of any party, persons who control, are controlled by, or are under common control with such party.

These Terms create a contractual relationship between you and ICAP and are legally binding. These Terms will take effect when you first undertake business with ICAP after having received them and you will be deemed to accept these Terms and to consent to our Execution Policy every time you enter into a transaction with us. Certain of our services are subject to separate terms and conditions and in the event of a conflict, those service-specific terms shall prevail

Any reference in any documentation between you and us to an earlier version of these Terms, shall, from the date these Terms take effect, be read as a reference to these Terms or to the relevant or corresponding part thereof.

The Terms shall apply to you regardless of your jurisdiction to the extent that they are not incompatible with your local legal and regulatory requirements.

1. SERVICES

Schedule 3 shall apply to the provision by us of advisory services to you.

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| <p>1.1. We may provide you with dealing services, both on a name passing basis (i.e. as an introducing broker) or on a matched principal basis in respect of any of the investments listed in Appendix 1. In addition, we may provide you with the Services described in the Schedules which form part of these Terms as described in Clause 1. These Terms apply to all methods or mechanisms used to provide our services to you, including, where applicable, electronic mechanisms and systems. Please note that special provisions apply when we act as a broker on a matched principal basis, which are contained in Schedule 1.</p> <p>1.2. We may also provide research and investment advice in relation to any of the investments listed in Appendix 1 if you have requested us to provide you with such services. If this is the case, Schedule 2 shall apply to the provision by us of investment research to you.</p> | <p>1.3. We or another ICAP Group Company may provide you with Revaluation Data. This service is governed by Schedule 4.</p> <p>1.4. We may also provide you with brokerage services related to physical shipping, including the sale and purchase of vessels and dry cargo and tanker chartering.</p> <p>1.5. We may provide you with Services related to the London Metals Exchange and these are governed by the Supplementary Terms of Business for transactions on the London Metals Exchange which form part of these Terms of Business.</p> <p>1.6. Unless we have agreed to provide you with advisory services governed by Schedule 3, we will not provide you with specific advice or a personal recommendation (i.e. an advice on investments, which is presented as suitable for you, or is based on a</p> |
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consideration of your particular circumstances, a **"Personal Recommendation"**). Consequently, trade ideas, research, other communications, market information, advice or recommendations that you may receive from us from time to time are not, unless it is clearly stated to the contrary, presented as being suitable to your specific circumstances and will not have been prepared or distributed in consideration of your particular circumstances. You therefore acknowledge that you enter into any transaction solely on the basis of your own judgment and have not relied on any investment research or advice provided by us.

- 1.7. We may, when you have instructed us to do so, deal for you in non-readily realisable investments. These are investments in which the market is limited or could become so; they can be difficult to deal in and it can be difficult to assess what would be a proper market price or value for them.
- 1.8. When we accept a dealing instruction in a securities-based investment from a US domiciled client, the order will be executed by one of our US affiliates, ICAP Corporates LLC as appropriate, and Schedule 5 shall apply.

2. OUR CAPACITY

- 2.1. The following ICAP Group Companies are regulated by the Financial Services Authority (the FSA):
 - (i) ICAP Electronic Broking Limited;
 - (ii) ICAP Energy Limited;
 - (iii) ICAP Europe Limited;
 - (iv) ICAP Futures LLC (London Branch);
 - (v) ICAP Shipping Derivatives Limited;
 - (vi) ICAP Shipping Tanker Derivatives Limited;
 - (vii) ICAP Securities Limited;
 - (viii) ICAP Securities USA LLC (London Branch);
 - (ix) ICAP WCLK Limited;
 - (x) My Treasury Limited;

- (xi) ICAP Equities Limited (an Appointed Representative of ICAP Securities Ltd)
- (xii) The Link Asset and Securities Co. Limited;

2.2. These entities may be amended by us on written notice from time to time, and an up-to-date list may be found at any time on ICAP's website at: www.icap.com.

2.3. The relevant ICAP Group Company arranging your transaction shall be notified to you in writing from time to time.

3. YOUR CAPACITY

- 3.1. For the purpose of the FSA Rules, we will treat you as a **"Professional Client"**. You shall notify us immediately if, at any point, you cease to fall, within such definition.
- 3.2. You are entitled to request a different client classification. The FSA Rules allow you to request classification as a retail client when we have classified you as an Eligible Counterparty or a Professional Client, but please note that we could not agree to such a request because we do not deal with retail clients.
- 3.3. Where we have classified you as a Professional Client, you may also request to be classified as an Eligible Counterparty. You understand that a request to be classified as an Eligible Counterparty will result in a lesser degree of protection under the FSA Rules for you. For information regarding the main differences in the FSA protections afforded to different client types, please see Appendix 3.
- 3.4. Unless we otherwise notify you in writing, we shall treat you alone as our client for the purposes of the FSA Rules and you will be liable as such. Subject to such notification to the contrary, you agree that no other person (whether disclosed to us or not) shall be our client nor have any rights hereunder, unless we expressly agree otherwise.

- 3.5. Unless otherwise indicated in writing by you, we shall assume that there are no restrictions to the type of transaction we may enter into with you or the markets upon which transactions may be effected.
- 3.6. You represent, warrant and undertake to us that, both at the date of these Terms and at the time of any transaction we may enter into with or for you:
- (i) you have full power and authority, as well as all necessary licences, authorisations, consents and approvals to enter into these Terms and to instruct us to execute or arrange any transaction in investments specified in Appendix 1 and to perform all your obligations hereunder;
 - (ii) you have adequate resources to enter into and perform any such transaction which you decide to undertake;
 - (iii) these Terms and any transactions entered into hereunder are your valid and binding obligations enforceable against you in accordance with these Terms, subject to bankruptcy or other applicable laws;
 - (iv) by entering into these Terms and any transactions hereunder, you will not violate any applicable rule;
 - (v) all information you have given to us is true and complete and any changes to the information given to us will be promptly notified to us;
 - (vi) you will ensure that all relevant investments or any documents of title and/or transfer forms and/or any relevant payments are delivered, paid or transferred to us or to whomever we may direct in sufficient time on or before the contractual settlement date to enable us to settle the transaction in accordance with market requirements;
 - (vii) unless otherwise agreed in writing:
 - (1) you will always contract as principal only and no person other than yourself has or will have any interest in any transaction or in any account that we hold on your behalf; and
 - (2) all cash, securities or other assets transferred to us pursuant to these Terms are your sole and beneficial property and will be transferred to or held by us free and clear of any lien, charge or other encumbrance and you will not charge, assign or otherwise dispose of or create any interest therein.
- 3.7. You shall 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, to the best of your knowledge, any information provided to us by you is complete, accurate and not misleading in any material respect and you agree to notify us should such information change in any material respect.
- 3.8. For the avoidance of doubt, ICAP is not required to assess the suitability of any investment or service provided or offered to you under these Terms, unless Schedule 3 applies to you, and you will therefore not benefit from the protection of FSA's rules on assessing suitability.
- 3.9. As a Professional Client you are deemed to have the necessary knowledge and experience to understand the risks involved in any investment or service provided or offered to you under these Terms. Unless you advise us that you do not consider that you do have the necessary knowledge and experience prior to the provision by us of such investment or service, the investment or services that we provide to you under these Terms will be deemed appropriate for you

when we are required by the FSA Rules to assess appropriateness for you.

- 3.10. When making a decision to deal in investments, you should consider the risk inherent in those products, and in any services and strategies related to them. Your assessment should include a consideration of a variety of potential risks including those relating to credit, the market, liquidity, interest rate, insolvency, foreign exchange, contingent liabilities, execution venue, legal and tax issues.

4. INSTRUCTIONS

- 4.1 You may communicate your dealing instructions to us verbally or in writing (for example by letter or fax or electronically). If you give us instruction in writing, such instructions must be received by us during normal business hours allowing sufficient time for us to act upon them. Any instruction is transmitted at your own risk. We shall not be liable for any loss suffered on account of any instruction not being received by us.
- 4.2 You agree that acceptance of an instruction to withdraw or amend an existing instruction is always subject to our receiving the instruction in time for the appropriate action to be taken. You agree that we may in our reasonable discretion, refuse to accept an order or any other instruction for your account.
- 4.3 We shall be entitled to rely on and treat as binding upon you any instructions which we believe to be from you or from your agent(s) (whether received by telephone, electronically, telex, facsimile or otherwise in writing) which we have accepted in good faith. No liability shall attach to us if an instruction which we have accepted and acted upon bona fide is subsequently discovered to have been given forged, falsified or amended without your authority.
- 4.4 Where these Terms are addressed to more than one person any instruction, notice, demand, acknowledgement or request to be given by or to you under these Terms may be given by or to any

one of you. We need not enquire as to the authority of that person.

- 4.5 You agree that all telephone conversations, which we may have with you (or any third party), may be recorded and such recordings may be used as evidence in the event of a dispute. Such recordings will be accepted by you as conclusive evidence of instructions received from you.

- 4.6 Any information or advice (whether oral or written) given by us, or any director, officer, employee or agent of ours (or of any other ICAP Group Company) to you shall be given in good faith. Where information prepared by our sales personnel, such as sales notes, is provided to you, it will not necessarily reflect our "house view" and its accuracy is not guaranteed. Such information will not have been reviewed or approved by or in conjunction with our research departments and is not a substitute for the research produced by us and to which Schedule 2 applies. Therefore it may not be relied upon as such.

5. OUR CHARGES OR COMMISSION

- 5.1. Unless otherwise agreed and where we are not acting as principal, you will be responsible for our charges, which will be levied in accordance with our rates in effect at the time the charges are incurred or as otherwise notified to you (including those relating to holding custody investments), verbally or in writing prior to dealing. Any alteration to these charges will be notified to you at or before the time of the change.
- 5.2. We may, to the extent permitted by the FSA Rules, share our charges or commission with, or receive remuneration from, intermediaries introducing business to us, associated companies or other third parties and will provide details to you on request, unless we have classified you as an Eligible Counterparty.
- 5.3. Unless otherwise agreed in writing, you will be responsible for the payment of any brokerage fees, transfer fees,

registration fees, stamp duty and any other applicable taxes, and all other liabilities, charges, costs and expenses payable in connection with transactions effected or services provided by us on your behalf.

- 5.4. All amounts (including without limitation all fees and charges) payable by you shall be due on demand without set off, counterclaim or deduction.

6. REPORTING TO YOU

- 6.1. You will be deemed to have received a trade confirmation or other notification from us at the time of the conversation in respect of a verbal notification or confirmation and, in the case of notification or communication by facsimile or other electronic means, the same day, otherwise not more than three (or, in the case of overseas clients, seven) business days from the date of dispatch.
- 6.2. You will notify us immediately upon receipt if you are not in agreement with any trade confirmation or other notification from us. In the absence of such immediate notification by you, the trade confirmation or notification will (in the absence of manifest error) be binding on you.

7. TIME OF THE ESSENCE

Time shall be of the essence with respect to any payment, delivery or other obligation you may have to us under these Terms.

8. CONFLICTS OF INTEREST

- 8.1. In accordance with the FSA Rules and our own Conflicts of Interest Policy (available on request or on our website www.icap.com), we have in place arrangements to manage conflicts of interest that arise between ourselves and our clients and between our different clients and therefore ensure that risks of damage to your interests will be prevented.
- 8.2. Where we do not consider that the arrangements under our Conflicts of Interest Policy are sufficient to manage

a particular conflict, we will inform you of the nature of the conflict so that you can decide how to proceed.

- 8.3. Your attention is drawn to the fact that when we enter into or arrange a transaction for you we, an associated company or some other person connected with us may have an interest, relationship or arrangement that is material and potentially conflicting with the transactions, investments or service that we provide to you. This could happen when:

- (i) we enter into or arrange a transaction for you and:
 - (1) we or one of our associated companies could for example be matching your transaction with that of another client by acting on his behalf as well as yours; or
 - (2) one of our associated companies could be dealing as principal for its own account by selling the investment concerned to you or buying it from you.
- (ii) we, or an associate, issues research, an associate, may undertake or have undertaken own account transactions in the investment concerned or any related investment.

- 8.4. When we are not able to deal with a conflict of interest effectively we may in some circumstances be unable to provide you with the service you require and we shall not be obliged to disclose the reason why or any further information relating thereto.

9. RIGHTS OF SET-OFF AND RETENTION OF YOUR FUNDS

- 9.1. We shall be entitled at any time to retain or make deductions from or set off amounts which we (or any other ICAP Group Company) owe to you (whether absolute or contingent and whether matured or unmatured, and including without limitation the proceeds

of any sale) in respect of any liability you have or may have towards us (or any other ICAP Group Company), whether such liability is absolute or contingent and whether matured or unmatured, under these Terms including, for example, when appropriate:

- (i) sums to be paid in settlement of transactions;
- (ii) settlement of our fees, commissions or charges or any other amounts referred to in Clause 5 (Our Charges or Commission) or any liabilities or costs incurred when exercising rights under Schedule 1 Clause 3 (Power to Sell, Buy-In or Close Out) or any other provision of these Terms;
- (iii) any interest payable to us; and
- (iv) payments to us pursuant to any indemnity.

9.2. Until you have paid or discharged in full all monies and liabilities owed to us (or any other ICAP Group Company) any monies from time to time outstanding to the credit of any of your accounts with us (or any other ICAP Group Company) shall not be due and payable although we may in our reasonable discretion make payments to you from such accounts, or otherwise exercise our rights of set off and/or combination and/or consolidation.

10. DEFAULT REMEDIES

10.1. If any of the following happens:

- (i) you fail to make any payment due to us or any other ICAP Group Company or to deliver any securities due to us or any other ICAP Group Company (or to our agents); or
- (ii) you fail to perform any other obligation owed to us or any other ICAP Group Company under these Terms; or
- (iii) any representation or warranty you make to us or any other ICAP Group Company proves false or misleading

either under these Terms or under any other agreement between you and us or any other ICAP Group Company; or

(iv) you become unable to pay your debts as they fall due or become insolvent or bankrupt or become the subject of any insolvency, bankruptcy, administration or similar proceedings; or

(v) a winding-up resolution is passed or a winding-up or administration order is made in respect of you or a receiver, liquidator, administrator or similar official is appointed in respect of you or any of your property;

we shall be entitled, without prior notice to you, to take any or all of the following actions and in all cases you will immediately indemnify us on demand for any losses, costs or expenses which we suffer or incur as a result:

- (1) to treat any or all outstanding transactions between you and us or any other ICAP Group Company as having been cancelled or terminated;
- (2) to sell any or all of the investments or other property which we or any other ICAP Group Company or our associated companies are holding or are entitled to receive on your behalf and to apply the proceeds in or towards satisfaction of any obligation or liability you may have to us or any other ICAP Group Company or our associated companies (including any contingent or prospective liability);
- (3) to set off (as described in Clause 9) any obligation we or any other ICAP Group Company owe to you, and/or to apply any cash we or any other ICAP Group Company hold for your account, against any obligation or liability you may have to us any other ICAP Group Company (including any contingent or prospective liability);
- (4) to close out, replace or reverse any transaction, enter into any

other transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we or any other ICAP Group Company consider necessary or appropriate to cover, reduce or eliminate our or the other ICAP Group Company's loss or liability under or in respect of any contracts, positions or commitments; or

(5) to terminate this Agreement

11. LIABILITY

11.1. We shall not be liable for any loss of opportunity whereby the value of your account may have been increased nor for any reduction in the value of your account as a result of market movements. We shall not be liable for the taxation consequences of any transaction nor shall we be liable for taxation charges arising for any reason.

11.2. Neither we nor our directors, officers, employees, agents nor any other ICAP Group Company shall be under any liability whatsoever for any loss or damage sustained by you as a result of or in connection with the services to which these Terms apply and the provisions contained in these Terms except insofar as, and then only to the extent that, such loss or damage is caused by negligence or wilful default, or fraud, or any failure to comply with the FSA Rules or the provisions of the Financial Services and Markets Act 2000 (FSMA).

11.3. Neither we nor our directors, officers, employees, agents nor any other ICAP Group Company shall be liable for any loss arising from any act or omission of any agent or third party who performs services pursuant to these Terms except to the extent that such loss is caused by wilful default, fraud or negligence in the selection of such agents or third parties on the part of us or our directors, officers, employees, agents or any other ICAP Group Company.

11.4. Nothing in these Terms will:

(i) exclude or restrict any obligation we may have to you, nor any liability we may incur to you, in respect of a breach by us of the FSA Rules; or

(ii) exclude or restrict to an extent prohibited by law any duty or liability we may have to you.

11.5. You irrevocably and unconditionally agree to indemnify us, our directors, officers, employees, agents and any other ICAP Group Company on demand and keep us fully and effectively indemnified (whether before or after termination of these Terms) against any claims, liabilities or expenses of any kind which may be incurred by us as a direct or indirect result of our acting under these Terms. However, this indemnity shall not apply to any loss or liability to the extent it arises or results from our negligence or wilful default, fraud or any contravention by us of the FSA Rules or the provisions of the FSMA.

12. FORCE MAJEURE

We shall not be in breach of our obligations under these Terms if there is any total or partial failure of performance of our duties and obligations occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, inability to communicate with market makers for whatever reason, failure of any computer dealing or settlement system, prevention from or hindrance in obtaining any energy or other supplies, labour disputes of whatever nature or late or mistaken delivery or payment by any bank or counterparty or any other reason (whether or not similar in kind to any of the above) beyond our control.

13. COMPLAINTS

13.1. If you have a complaint about us you should raise it in the first instance with our employee acting for you. We will endeavour to resolve it informally. If however you are not satisfied with the response of our employee (or if you

prefer not to raise the matter with our employee) you may raise the matter with our Head of Compliance EMEA & Asia.

- 13.2. If you wish to make a formal complaint this should be made in writing and addressed to our Head of Compliance EMEA & Asia. Your formal complaint will then be investigated internally by employees who were not involved with the subject matter of your complaint and have been trained in complaints handling.

14. VARIATION

- 14.1. We may, from time to time, by written notice to you, make such modifications, amendments and additions to these Terms as we consider necessary or desirable, including those required in order to comply with any applicable law or the requirements of any governmental or other regulatory body or to comply with the rules of an exchange or clearing house.
- 14.2. All such modifications, amendments or additions shall have immediate effect.

15. TERMINATION

- 15.1. You may terminate these Terms at any time by written notice to us subject to your having no outstanding obligation to us. We may terminate these Terms at any time by written notice to you.
- 15.2. Termination shall not affect your obligation to settle transactions effected prior to the date of termination and shall not prejudice any right or obligation that may already have arisen. We shall also continue to have the right to disclose information where required to a UK or overseas regulator.

16. ASSIGNMENT

You may not assign any of your rights or obligations under these Terms to any other person without our prior written agreement. We may assign our rights or obligations to any ICAP Group Company or our associated companies or to any person or entity who may

acquire the whole or any part of our business or assets.

17. DATA PROTECTION

- 17.1. You acknowledge that we may obtain information (including personal data and sensitive personal data, each as defined in the Data Protection Act 1998) about you. We and you will each treat as confidential (both during and after the termination of the relationship between you and us) any information learned about the other, its investment strategy or holdings or products or services in the course of the relationship pursuant to these Terms and, except as otherwise agreed, shall not disclose the same to any third party without the other's consent.
- 17.2. You consent to disclosure by us to the FSA (or any successor to the FSA), any relevant exchange, or any other regulatory body or authority in the United Kingdom or elsewhere of such information (including, without limitation, information relating to your transactions and accounts) relating to services provided to you pursuant to these Terms as may be requested by them or that we may otherwise be required to disclose.
- 17.3. Notwithstanding anything to the contrary, you specifically authorise that we and any ICAP Group Company may use, store or otherwise process any such information (whether provided electronically or otherwise) to administer these Terms, provide services to you, including without limitation, monitoring and analysing the conduct of your account, assessing any credit limit or other credit decision (as well as the fees and other charges to be applied to your account) and enabling us to carry out statistical and other analysis, and otherwise market services and products to you.
- 17.4. You acknowledge and agree that in doing so, we may transfer or disclose such information to any other ICAP Group Company or third party wherever located in the world. Such parties may include those who provide services to us or act as our agents, those to whom

we transfer or propose to transfer any of our rights or duties under these Terms and those licensed credit reference agencies or other organisations that help us and others make credit decisions and reduce the incidence of fraud or in the course of carrying out identity fraud prevention or credit control checks.

- 17.5. You agree that we may transfer information we hold about you to any country including countries outside the European Economic Area which may not have data protection laws, for any of the purposes described in this Clause 17.

- 17.6. If any personal data or sensitive personal data belonging to any of your directors, employees, officers, agents or clients is provided to us, you represent to us that each such person is aware of and consents to the use of such data as set out in this Clause 17 and you agree to indemnify us against any loss, costs or expenses arising out of any breach of this representation.

18. NOTICES

- 18.1. All notices between us shall be in writing and may be served personally or by facsimile, or by other electronic means or by first class post to us at the address we may provide in writing from time to time.
- 18.2. With the exception of dealing instructions to us (which must be communicated in accordance with clause 4) notices shall be deemed to have been served three (or, in the case of overseas clients, seven) business days after having been posted, or if sent by facsimile or other electronic means, one business day after transmission. A business day is any day when investment business is generally conducted in London or such other financial centre as is notified to us by you prior to the relevant transaction.

19. RIGHTS AND REMEDIES

The rights and remedies provided under these Terms shall be cumulative and not exclusive of those provided by

law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. We may waive any right, power or privilege under these Terms only by (and to the extent of) an express statement in writing. No failure by us to exercise or delay by us in exercising any of our rights under these Terms or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.

20. ILLEGALITY

If any provision or term of these Terms or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from these Terms and shall be deemed to be deleted from these Terms provided always that, if any such deletion substantially affects or alters the commercial basis of these Terms, we reserve the right to amend and modify these Terms in such fashion as may be necessary or desirable in the circumstances.

21. RIGHTS OF THIRD PARTY

No person who is not a party to these Terms other than any other ICAP Group Company may enforce any of these Terms or rely on any exclusion of limitation contained in these Terms whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

22. EXCLUSIVE JURISDICTION

You agree that the courts of England are to have exclusive jurisdiction to settle any disputes, which may arise out of or in connection with these Terms. Nothing contained in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction.

23. GOVERNING LAW

The provisions of these Terms shall be governed by the laws of England and Wales.

APPENDIX 1 FINANCIAL INVESTMENTS IN RESPECT OF WHICH WE PROVIDE OUR SERVICES

- (1) Transferable Securities;
- (2) Money Market Instruments;
- (3) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates and yields or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that may be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of default or other terminal event);
- (5) Options, futures, swaps and any other derivative contract relating to commodities that can be physically settled provided they are traded on a regulated market and/or an MTF;
- (6) Options, futures, swaps, forwards and any other derivative contract relating to commodities that can be physically settled not otherwise mentioned in 5 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to margin calls;
- (7) Derivative instruments for the transfer of credit risk;
- (8) Financial contracts for differences; and
- (9) Options, futures, swaps, forward rate agreements and other derivative contracts relating to climatic variables, emission allowances or inflation rates or other economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of default or other terminal event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Appendix 1, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls. We may also provide other services as agreed between us from time to time.

APPENDIX 2 DEFINITION OF ELIGIBLE COUNTERPARTY

In accordance with the FSA Rules, where we:

- (a) deal on our own account; or
- (b) execute orders on your behalf; or
- (c) receive and transmit orders; or
- (d) provide you with an ancillary service in connection with any of (a), (b) or (c);

you will be treated as an Eligible Counterparty, if you fall into one of the following categories (whether you are from an EEA state or not):

- (i) an investment firm;
- (ii) a credit institution;
- (iii) an insurance company;
- (iv) a collective investment scheme authorised under the UCITS Directive or its management company;
- (v) a pension fund or its management company;
- (vi) another financial institution authorised or regulated under European Community legislation or the national law of an EEA State;
- (vii) an own account commodities or commodity derivatives dealer, where, if it is part of a group, the main business of that group is not the provision of other investment services, or a local;
- (viii) a national government or its corresponding office, including a public body that deals with the public debt;
- (ix) a central bank;
- (x) a supranational organisation;
- (xi) a firm exempted from the application of MiFID under Article 2(1)(I) of that Directive.

Additionally, you will be treated as an Eligible Counterparty where we separately agree to such a classification with you. In such cases you will be deemed an "elective Eligible Counterparty" for the purposes of FSA Rules.

APPENDIX 3 TYPES OF CLIENT CLASSIFICATION AND THE DIFFERENCES IN FSA PROTECTIONS

Where we treat you as a Professional Client, you will be entitled to fewer protections under FSA Rules than you would be entitled to as a retail client. In particular:

- (a) you will be given fewer information disclosures with regard to the firm, its services and any investments (for example on costs, commissions, fees and charges);
- (b) where we assess whether a product or service is appropriate for you, we can assume that you have the necessary level of knowledge and experience to understand the risks involved in it;
- (c) if we are ever required to assess the suitability of a Personal Recommendation made to you, we can assume that you have the necessary experience and knowledge to understand the risks involved, and can sometimes assume that you are able financially to bear any investment risks consistent with your investment objectives;
- (d) when providing you with best execution we are not required to prioritise the overall costs of the transaction as being the most important factor in achieving best execution for you;
- (e) we do not need to inform you of material difficulties relevant to the proper carrying out of your order(s) promptly;
- (f) should we provide you with periodic statements, we are not required to provide them as frequently as for retail clients;
- (g) where we are holding your client money, we are not required to notify you of whether interest is payable on it; and
- (h) you will not be entitled to compensation under the Financial Services Compensation Scheme.

Where we treat you as an Eligible Counterparty, you will be entitled to fewer protections under FSA Rules than you would be entitled to as a Professional Client. In particular, and in addition to the above:

- (a) we are not required to provide you with best execution in executing your orders;
- (b) we are not required to disclose to you information regarding any fees or commissions that we pay or receive;
- (c) we are not required to assess the appropriateness of a product or service that we provide to you but can assume that you have the expertise to choose the most appropriate product or service for yourself;
- (d) we are not required to provide you with information about ourselves, our services and the arrangements through which we will be remunerated;
- (e) we are not required to provide you with risk disclosures on the products or services that you select from us; and
- (f) we are not required to provide reports to you on the execution of your orders.

SCHEDULE 1 (APPLICABLE TO THOSE TRANSACTIONS INVOLVING SECURITIES WHERE ICAP ACTS AS A MATCHED PRINCIPAL BROKER)

1. DEALING

- 1.1. We shall not be under any obligation to accept a dealing instruction from you nor need we give any reasons for declining to do so. We will make all reasonable efforts to notify you promptly of such refusal, but shall not be responsible for any losses, costs, damages or expenses incurred by you as a result of our refusal to effect a transaction.
- 1.2. When we accept a dealing instruction from you we will seek to action it as soon as reasonably practicable in the circumstances. We shall not be responsible for any losses, costs, damages or expenses incurred by you as a result of any delay or any change in market conditions before the transaction is effected.
- 1.3. All transactions are subject to all applicable laws, rules, regulations howsoever applying and, where relevant, the market practice of any exchange, market, trading venue and/or any clearing house and including the FSA Rules (together, the "**Applicable Rules**"). In the event of any conflict between these Terms and Applicable Rules, the Applicable Rules shall prevail subject that nothing in this preceding clause shall affect our rights under Clause 8 (Rights of set-off and retention of your funds).
- 1.4. We may take or omit to take any action we think appropriate to ensure compliance with Applicable Rules and we shall not be required to do anything which would in our opinion infringe any such Applicable Rule. We are not required to give prior notice to you of any such action or inaction, and each such action or inaction will be binding upon you.
- 1.5. Unless we have classified you as an Eligible Counterparty your orders will be executed in accordance with our Execution Policy (as amended from time to time). 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 provided us with such consent, 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. 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.
- 1.6. Subject to Applicable Rules and in accordance with our Order Execution Policy, we may combine your order with our own orders, orders of persons connected with us and orders of other customers. Such aggregation may on some occasions operate to your advantage and on others to your disadvantage.
- 1.7. You agree that whenever you place an instruction with us to purchase securities, during the period between execution of the order and settlement, you shall be solely responsible for instructing us to take up any rights, exercise any conversion or subscription rights, deal with take-over or other offers or capital re-organisations or exercise any voting rights or affect any other corporate actions with respect to such securities and that we shall have no obligations to notify you of any such rights nor shall we be obliged to take any action in respect of such rights unless and until we receive timely instructions from you.
- 1.8. Where we act as a principal in executing a transaction in an investment which is not a packaged product or readily realisable security (as defined by the FSA), the unit price of the transaction shall be arrived at by reference to the market price for the investment then available on the market on which such investments are generally traded or, if no such price is available, on a best efforts basis, and any reference in a confirmation to a market price shall be construed accordingly.

- 1.9. We will not be executing orders on your behalf, and therefore the Order Execution Policy will not apply, where we are dealing on the basis of a "Request for Quote" service.

2. POWER TO SELL, BUY IN OR CLOSE OUT

- 2.1. If, at any time, we have any reason to believe that you may be unable or unwilling to meet any liabilities which you have incurred to us or which we may have incurred on your behalf or to comply with any other obligations under these Terms, we shall be entitled (and are irrevocably authorised by you) to take all or any of the following actions without prior notice to you:
- (i) sell any investments bought on your behalf but for which you have not paid on or before the relevant settlement day;
 - (ii) close or rescind open positions on your account. We may do so, for example, if any cash or investments have not been delivered by you on or before the relevant settlement day; and
 - (iii) take any other steps (whether or not similar to the above) we may consider to be necessary to meet any obligations which you have to comply with under these Terms or otherwise to protect our position. Any costs or losses incurred by us in effecting any or all of clause 2.1(i), (ii) or (iii) will be paid by you to us.
- 2.2. Any restrictions on our power to sell or otherwise deal with assets of yours charged to us or held by us, contained in the Law of Property Act 1925 or any other applicable law are, to the extent permitted by law, excluded.

3. SETTLEMENT

- 3.1. Unless otherwise specifically agreed with you, settlement of all transactions with or for you must be made in accordance with the usual Terms for settlement of the appropriate exchange, market or clearing house where applicable and/or market convention.
- 3.2. Unless we expressly agree to the contrary, all amounts of every kind which are payable by you to us and vice versa in relation to the settlement of trades will be payable on delivery against payment basis.
- 3.3. We are not obliged to settle any transactions whether we are acting as principal or as agent or account to you unless and until we (or our settlement agents) have received all necessary documents (including, for the avoidance of doubt settlement instructions) or cleared funds. Our obligations to deliver investments to you or to your account or to account to you for the proceeds of the disposal of investments are conditional on prior receipt by us of appropriate documents (including, for the avoidance of doubt settlement instructions) or cleared funds from you.
- 3.4. In the case of securities, which have already been committed to a take-over offer, settlement may be delayed if the transaction can only be completed with securities issued by the offeror.
- 3.5. If, in any transaction, we deliver securities or pay money to you or to your order when you are obliged to pay money or deliver securities to us or to our order at that time or subsequently and, for whatever reason, your obligations are not performed simultaneously with or prior to our obligations, you shall hold on trust for us any such securities or money received from us until your own obligations to us are fully performed.

- 3.6. If you have not delivered the appropriate funds or securities to us on the due date for settlement, we reserve the right, as appropriate, to exercise a sell-out or buy-in of the relevant securities (as described in Clause 2 of this Schedule 1) or acquire alternative securities by whatever means we determine in our absolute discretion. Where we do so, our obligation to deliver the securities to you; accept the securities from you or receive/ pay the consideration will cease. You shall be responsible for any losses we incur arising out of your non-performance or any actions we take as a result thereof.
- 3.7. You will indemnify us and our employees and agents against any cost, loss, liability, penalty or expense arising from your failure to deliver securities or funds to us when they are due.
- 3.8. We shall be entitled, without prior notice to you, to make the currency conversions necessary or desirable for the purposes of fulfilling your trading obligations. Any such conversion shall normally be made by us, as principal, at a rate which reflects the size, liquidity and timing of the transaction. We shall disclose to you the relevant rate on the contract note or confirmation but will be entitled to retain any profit we or any associate may derive from the transaction. Any foreign exchange risk arising from any contract, our compliance with our obligations or any exercise of our rights under these Terms shall be borne by you.
- 3.9. In order to effect transactions for you, you confirm that we may (subject to an obligation to account to you for property of the same nature and description but not necessarily identical to the property originally delivered to us and subject to our other rights under these Terms) without prior notice to you deposit, charge or pledge any collateral you may deliver to us to any exchange, clearing house, broker or other third party on Terms that such third party may enforce such deposit, charge or pledge in satisfaction of any obligations that we may incur to such third party or of any such obligations incurred by you or by any other client.

4. CLIENT ASSETS

- 4.1. In the normal course of business it is very unlikely that we will hold assets belonging to you and unless specifically agreed in writing we do not provide a safe custody service. However if such a situation does occur we will treat any such assets in accordance with the FSA Client Assets rules.
- 4.2. Safe custody investments may be registered or recorded in your name, the name of a nominee or custodian or in our name (but only if the investment is subject to the law or market practice of a jurisdiction outside the United Kingdom and we have reasonably determined that it is either (a) in your best interests to register or record your investment in that way, or (b) that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and we have notified you of that fact).
- 4.3. Where a safe custody investment is registered in our name or in the name of the nominee and/ or custodian, the safe custody investment may not be segregated from our designated investments or that of the nominee or custodian, and, in the event of our default or the default of the nominee or custodian, your assets may not be as well protected from claims made on behalf of our general creditors or the creditors of the nominee or custodian. We do not accept responsibility for the default of any such nominee or custodian.
- 4.4. Where the safe custody investments are subject to the law or market practice of an overseas jurisdiction or it is in your best interest to do so, we may deposit your safe custody investments with a third party outside England and Wales, provided that it is based in a jurisdiction which specifically regulates and supervises the safekeeping of financial instruments. We will not deposit your safe custody investments with third party in a non-EEA state which does not regulate custody activities unless (i) the nature of the financial instrument requires it to be deposited in such a state or (ii) we receive a prior

written instruction from you, in which case the consequences of doing so are entirely at your own risk.

- 4.5. Where we hold safe custody investments outside England and Wales, there may be different settlement, legal and regulatory requirements in these overseas jurisdictions from those applying in England and Wales, and there may be different practices for the separate identification of safe custody investments. The safe custody investments may not be segregated and may be treated in a different manner from that which would apply if the assets were held in England or Wales.
- 4.6. Sub custodians may hold the custody assets at your risk and on such Terms and conditions as the sub custodian may require. We shall be entitled to grant to sub custodians liens and/or other security interests over the custody assets. We shall not be liable for the acts, default or insolvency of any sub custodian, nor for any expense, loss or damage suffered by or occasioned to you in connection with those acts, default or insolvency in the absence of fraud, gross negligence or willful default by us in the initial selection and supervision of any sub custodian. We will assume responsibility for claiming and receiving dividends, interest payments and other rights.
- 4.7. We will act on your instructions regarding the exercise of conversion, subscription and voting rights, and in respect of take-overs, capital reorganisations and other offers but shall not be liable to you for failing to act in circumstances where no such instructions have been received. We shall provide information, including statements, to you regarding your safe custody investments as required by the FSA Rules. We may pool your safe custody investment with those of one or more of our other clients.

5. CLIENT MONEY

- 5.1. We will normally settle transactions on a "delivery versus payment" basis and any money received will not usually be eligible to be treated as client money under FSA Rules.
- 5.2. However, when we hold client money on your behalf, we will do so in accordance with the FSA client money rules. We will promptly place any client money received into an account or accounts (including a designated client fund account (as defined by the FSA Rules), the usage of which you consent by entering into these Terms) opened at a central bank, a credit institution within the EEA or a bank authorised by its local regulator outside of the EEA.
- 5.3. We may hold client money with (1) a bank or credit institutions located outside England and Wales, or (2) pass client money to an intermediate broker, settlement agent or OTC counterparty outside England and Wales. In such circumstances the legal and regulatory regime applying to such person will be different from that of the United Kingdom and, in the event of failure of such person, your money may be treated in a different manner from that which would apply if the money was held in an account in, or by an intermediate broker, settlement agent or OTC counterparty in, the United Kingdom. We may hold client money with an overseas bank whether or not it has accepted that it has no right of offset or counterclaim against money held in a client money bank account (as defined by the FSA Rules) in respect of any sum owed on any other account of ours.
- 5.4. Interest will not be payable to you in respect of any money which we hold for you (including, in particular, funds received in advance of the due date for settlement or representing dividends) unless specifically agreed between us.
- 5.5. Any client money held by us shall be subject to a right of set-off, lien or other security interest as set out in these Terms.
- 5.6. You consent to us ceasing to treat any money held for you or on your behalf as client money, and, accordingly, release it from our client bank accounts where there has been no

movement on your balance for a period of at least six years, notwithstanding any payments or receipts of charges, interest or similar items. Before doing this we will however write to you at your last known address in to return the balance to you and we undertake to make good any valid claims against any released balances even if we have ceased treating your money as client money.

SCHEDULE 2 INVESTMENT RESEARCH

- 1 Any research, recommendation or information we give you is provided solely for information purposes and to enable you to make your own investment decisions and is not otherwise to be relied upon by you.
- 2 Our research reports, recommendation and information should not be construed as a solicitation or an offer to buy or sell any financial instruments in any jurisdiction and they do not amount to advice or a Personal Recommendation.
- 3 Whilst we or any other ICAP Group Company will have taken reasonable care in the preparation of research reports, recommendation and information, we give no representation, warranty or guarantee, express or implied, as to the accuracy, completeness or reliability of such information or as to the legal, regulatory or tax consequences of any transaction effected on the basis of our research reports recommendation and information. We are under no obligation to update or keep current the information contained in such document.
- 4 Any opinions expressed in our research reports, recommendation and information are subject to change without notice and may differ or be contrary to opinions expressed by other business areas or other ICAP Group Company as a result of using different assumptions and criteria.
- 5 The analysis contained in our research reports, recommendation and information is based on numerous assumptions and different assumptions could result in materially different results.
- 6 We shall not be obliged to ensure that any research reports, recommendation and information we provide to you, or any information on which it is based, will be given to you before or at the same time as such is made available to any other person, including, without limitation, any other ICAP Group Company or other clients.
- 7 You should read and consider carefully any disclosures or disclaimers made in our research reports, recommendation and information. We shall not be under any obligation when we deal in investments for or with you to take account of any such research reports, recommendation or information.
- 8 Our research reports, recommendation and information may appear in one or more screen information services.
- 9 No research report, recommendation nor any information contained in such document issued by us may be reproduced by you for any purpose except with our written permission.
- 10 If our research reports, recommendation and information contain a restriction on the person or category of person for whom that document is intended or to whom it may be distributed, you agree that you will not pass it on to any such person or category of persons.

SCHEDULE 3 GENERAL ADVISORY SERVICES

1. SERVICES

- 1.1. If you require us to provide advisory services to you we will provide you with Personal Recommendation (i.e. an advice on investments, which is suitable for you or is based on a consideration of the your particular circumstances) both:
- (i) by contacting you periodically by telephone, post, fax or email with details of new investments and/or suggested changes to your investment that we believe are suitable for you; and
 - (ii) by replying to your request for advice.
- 1.2. Where we provide you with a Personal Recommendation it is valid only at the time it is made and must not be relied on at any time after we make it, unless we expressly state otherwise.
- 1.3. We will not review your investment at regular intervals or otherwise and this therefore remains your responsibility. We will not act for you on a discretionary basis.
- 1.4. We will not provide or be responsible for the provision of any tax or legal advice in respect of your investment.

2. SUITABILITY

- 2.1. Where we make a Personal Recommendation to you, we are obliged to take reasonable steps to assess whether such Personal Recommendation is suitable for you based on information provided by you regarding your knowledge and experience in the relevant investment field, your financial situation and your investment objectives.
- 2.2. As we have classified you as a professional client, we are entitled to assume that you have the requisite knowledge and experience in the relevant investment field. We are also entitled to assume that you are able financially to bear any related investment risks consistent with your investment objectives, either because you are a "per-se professional client" as defined in the FSA Rules or because we have carried out the assessment required by the FSA when we classified you as a professional client. If you do not consider this to be the case, you must make us aware of this prior to the provision any Personal Recommendation and provide us with any available information as to the level of your knowledge and experience and/or as to your financial situation as appropriate. We will then rely on the information that you have supplied to us.
- 2.3. Unless otherwise advised in writing, you confirm that your objectives are based upon either:
- (1) hedging current exposures;
 - (2) maximising income; or
 - (3) long term capital growth.
- 2.4. Where we have requested that you provide us with information regarding your: (i) investment objectives; (ii) financial status (in other words, evidence that you would be able financially to bear any investment risks which may be related to your investment objectives); and (iii) knowledge and experience in the investment field relevant to the Personal Recommendation provided to you for the purposes of assessing suitability, we shall assume that the information you provided is accurate. We will have no responsibility to you if such information changes or becomes inaccurate unless you have informed us in writing of such change.

3. LIMITATION OF LIABILITY

- 3.1. Whilst we will have taken reasonable care in the preparation of the Personal Recommendation we provide to you, we give no representation, warranty or guarantee as to their accuracy or completeness or as to any tax or other consequences. Further, you acknowledge that the Personal Recommendation provided to other clients may be different the one provided to you and that such Personal Recommendation may be inconsistent with and/or contrary to any proprietary investments of our directors, officers, employees, agents or any other ICAP Group Company.
- 3.2. We shall not be liable for any costs, claims, liabilities, expenses or losses which you may suffer as a result of relying on any Personal Recommendation provided to you unless we have been negligent or acted in bad faith.

4. RISK WARNING

Any investment involves a degree of risk and some investments are more risky than others. Prices can fall as well as rise and there is a risk that you may lose some or all of the money that you have invested by following the Personal Recommendation that we provide to you. Past performance is no indicator of future performance. Income can fluctuate and is not guaranteed. Movement of exchange rates may be favourable or unfavourable on the gain or loss otherwise accruing to the value of an asset.

SCHEDULE 4 SUPPLY OF DATA BY ICAP GROUP COMPANIES

In the event that we supply you or your group companies through whatever medium with non-live pricing data (the "Data") which you may use for revaluation purposes, you agree that the Data may be supplied on the following Terms:.

1. ICAP shall send or make available the Data to you and/or your group companies by such method(s) from time to time and at such times as ICAP in its sole discretion decided or as ICAP from time to time otherwise agree with you and/or your group companies.
2. You acknowledge that the Data is for use by Eligible Counterparties and Professional Clients only and it is not intended for Retail Clients as defined by the FSA Rules.
3. Save as provided in 9 below, you undertake to keep the Data confidential and not to disclose the Data or any part of it to any person (and for the purposes of these Terms "person" shall include without limitation any individual, partnership, company or corporation), except that you may disclose the Data to your officers and employees and those of your group companies provided in each case that (i) you inform them of the confidential nature of the Data; and (ii) you procure that they comply with this Schedule 4 of these Terms as if they were a party to these Terms.
4. You and your group companies undertake not to use the Data or permit or suffer the same to be used for any purpose other than your or your group companies' internal use. You undertake not to, and shall procure that your group companies shall not, sell, transfer or sub-licence the Data to any third party or permit or suffer the same to be sold, transferred or sub-licensed.
5. You undertake not to, and shall procure that your group companies shall not, disclose to any person the fact that ICAP is supplying the Data to you and/or your group companies without ICAP's prior written consent.
6. You agree that the Data belongs to, and is the intellectual property of, ICAP, its group companies and/or its and their respective licensors.
7. You acknowledge that the Data is not intended to be relied upon as authoritative or taken in substitution for the exercise of judgement and that it is not, and should not be construed as, an offer, bid or solicitation in relation to any financial instrument. You further acknowledge that the Data is obtained from sources believed to be reliable and may also be based on opinions, estimates, projections and extrapolations constituting ICAP's judgement (including that of its relevant group companies and/or their respective licensors). ICAP and its group companies do not guarantee, and expressly disclaim and liability for, and make no representations or warranties, whether express or implied, as to the Data's currency, accuracy, timeliness, completeness or fitness for any particular purpose. ICAP and its group companies accept no liability whatsoever for any loss (including, but not limited to, any direct, indirect or consequential loss, whether or not such loss is foreseeable and whether or not ICAP has been appraised of the use to which the Data will be put) howsoever arising from the Data's use, the timeliness or its delivery or its failure to be delivered at all.
8. You agree that damages would not be adequate remedy for any breach of the terms of this Schedule 4 and that ICAP may be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Schedule 4. ICAP and each of its relevant group companies shall be entitled to enforce this Schedule 4 against you and/or your group companies.
9. Your obligations under clause 3 of this Schedule 4 (and those of your group companies) shall not apply to the extent that disclosure of the Data is required to be made as a result of a subpoena, requirement or official request from any competent judicial, administrative, legislative or regulatory or self-regulatory authority or body; provided, however, that unless prohibited by court order you shall provide advance notice to ICAP of the intended disclosure of the Data in order to allow ICAP an opportunity to object to the disclosure of the Data.

For the purposes of this Schedule 4, "you" shall include a reference to yourself as well as all or any of your group companies who directly or indirectly receive data from time to time (on whose behalf you shall be deemed to contract). "ICAP" means the relevant ICAP Group Company supplying Data.

SCHEDULE 5 ACTING FOR US DOMICILED CLIENT

Where a transaction has been effected on behalf of a US client, ICAP Corporates LLC is acting in the capacity of US intermediary broker-dealer. ICAP Corporates LLC is registered as a broker-dealer with the U.S. Securities and Exchange Commission, is a member of the Financial Industry Regulatory Authority, Inc. (www.FINRA.org), and is a member of SIPC. In transactions where ICAP Corporates LLC acts as Agent, the buyer and seller will be furnished upon written request. If you have any inquiries, please contact (preferably by fax):

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TEL: 212-815-6799
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