

# Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

## **for Clearing of Transactions on BATS**

September 2011



# Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

for Clearing of Transactions on BATS

## Table of contents

<b>1.0</b>	<b>SCOPE</b>	<b>3</b>
<b>2.0</b>	<b>DEFINITIONS</b>	<b>3</b>
<b>3.0</b>	<b>SECURITIES ELIGIBLE FOR CLEARING</b>	<b>3</b>
<b>4.0</b>	<b>FORMATION OF SINGLE CONTRACTS</b>	<b>4</b>
<b>5.0</b>	<b>CANCELLATION OF SINGLE CONTRACTS</b>	<b>4</b>
<b>6.0</b>	<b>TERMS OF SINGLE CONTRACTS</b>	<b>7</b>
<b>7.0</b>	<b>COLLATERAL</b>	<b>8</b>
<b>8.0</b>	<b>DEFAULT FUND FOR MTF TRADING PLATFORM(S)</b>	<b>9</b>
<b>9.0</b>	<b>PROVISIONS COMMON TO MARGIN AND CONTRIBUTIONS</b>	<b>10</b>
<b>10.0</b>	<b>X-CLEAR COLLATERAL ACCOUNTS</b>	<b>12</b>
<b>11.0</b>	<b>ORDER OF REALISATION OF COLLATERAL</b>	<b>12</b>
<b>12.0</b>	<b>SETTLEMENT</b>	<b>13</b>
<b>13.0</b>	<b>LATE SETTLEMENT</b>	<b>14</b>
<b>14.0</b>	<b>MARKET DISORDER, BAD DELIVERIES ETC.</b>	<b>15</b>
<b>15.0</b>	<b>TRADING DAYS</b>	<b>15</b>

# Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

## for Clearing of Transactions on BATS

### 1.0 SCOPE

These Trading Platform Specific General Terms and Conditions of Business (English Law) (the "**Trading Platform Specific GTCB**") shall form part of the Contractual Relationship between x-clear and each x-clear Member who has entered into a Contract for Clearing Services (English Law) with x-clear in relation to BATS and shall be read in conjunction with the relevant Contract for Clearing Services (English Law), Pledge Agreements, GTCB and Rules and Regulations. These Trading Platform Specific GTCB amend and supplement the GTCB as they apply to the Clearing of BATS Transactions.

### 2.0 DEFINITIONS

In these Trading Platform Specific GTCB, the following words and expressions shall have the following meanings:

"**BATS**" means the Trading Platform operated by BTL;

"**MTF Default Fund**" means the Default Fund established by x-clear for the Clearing of MTF Transactions and applied in the event of an x-clear Member's non-performance or Default or the non-performance or Default of other x-clear Members in respect of the MTF Trading Platform(s);

"**BATS List of Securities eligible for Clearing**" means those BATS Products that are included in the List of Securities eligible for Clearing;

"**BATS Member**" means a member of BATS or any other Person approved by BATS who trades on that platform;

"**BATS Product**" means a Trading Platform Product traded on BATS;

"**BATS Rules**" mean the Trading Platform Rules for BATS as in force from time to time;

"**BATS Transaction**" means a Trading Platform Transaction on BATS in relation to a BATS Product that is included in the BATS List of Securities eligible for Clearing; and

"**BTL**" means BATS Trading Limited, a company incorporated in England, registered under the number 6547680 and whose registered office is at Ground Floor, 25 Cophall Avenue, London EC2R 7BP.

Other capitalised terms shall have the meanings given to them in the GTCB. References to clauses shall be read as references to the clauses of these Trading Platform Specific GTCB, unless otherwise specified.

### 3.0 SECURITIES ELIGIBLE FOR CLEARING

The BATS List of Securities eligible for Clearing shall be maintained by x-clear on its website in a relevant section thereof. x-clear may at its discretion decide which BATS Products are eligible for Clearing and reserves the right in individual cases, at its discretion, to remove a

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

BATS Product from the List of Securities eligible for Clearing whereupon such BATS Product shall no longer be eligible for Clearing by x-clear.

#### 4.0 FORMATION OF SINGLE CONTRACTS

Subject to Clause 6.0 of the GTCB and Clause 5.0 below, and in an instance where both the BATS Members that are party to a BATS Transaction are either x-clear GCMs, x-clear ICMs or x-clear NCMs, Single Contracts shall arise between x-clear and each x-clear Member by way of Novation in respect of the BATS Product to which the BATS Transaction relates. Novation shall occur at the moment a BATS Transaction arises. Where the Single Contract is between x-clear and an x-clear GCM, the x-clear GCM shall be regarded as acting as principal on behalf of the relevant x-clear NCM pursuant to the GCM-NCM Agreement. At the moment of Novation, two Single Contracts shall arise automatically between: (i) x-clear and the Selling x-clear Member, where x-clear will assume the role of buyer of the BATS Product to which the BATS Transaction relates, and (ii) x-clear and the Buying x-clear Member where x-clear will assume the role of seller of the BATS Product to which the BATS Transaction relates.

Subject to Clause 6.0 of the GTCB and Clause 5.0 below, and in an instance where one BATS Member that is party to a BATS Transaction is an x-clear GCM, x-clear ICM or x-clear NCM and the counterparty to the same BATS Transaction, being a BATS Member, has elected for a Co-CCP, if any, to act as Central Counterparty (whether by virtue of that BATS Member's agreement with a Co-CCP GCM, if any, or otherwise), a Single Contract shall arise between x-clear and the x-clear Member by way of Novation in respect of the BATS Product to which the BATS Transaction relates. Novation shall occur at the moment an Inter-CCP Contract arises. An Inter-CCP Contract shall arise between x-clear and the Co-CCP pursuant to and subject to the relevant Link Agreement where x-clear will assume the role of buyer or seller, as applicable, of the BATS Product to which the BATS Transaction relates. Where the Single Contract is between x-clear and an x-clear GCM, the x-clear GCM shall be regarded as acting as principal on behalf of the relevant x-clear NCM pursuant to the GCM-NCM Agreement. At the moment of Novation a Single Contract shall arise automatically between x-clear and the Selling x-clear Member or Buying x-clear Member, as applicable, where x-clear will assume the role of buyer or seller of the BATS Product to which the BATS Transaction relates, respectively.

x-clear shall be entitled to rely conclusively and without further enquiry on the accuracy and authenticity of any and all information and data regarding any BATS Transaction, Single Contract or Inter-CCP Contract submitted to x-clear by or on behalf of BTL, any provider of Transaction Routing, if any, any Approved Settlement System, any Co-CCP, if any, or the x-clear Member, whether or not the x-clear Member or an x-clear NCM has authorised the submission of such information or the details so submitted.

#### 5.0 CANCELLATION OF SINGLE CONTRACTS

1. A Single Contract shall automatically be void *ab initio* if:
  - a. the corresponding BATS Transaction is cancelled, rejected or avoided in accordance with the BATS Rules whether pursuant to a "contra" request or otherwise; or

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

- b. the BATS Product which is the subject of the corresponding BATS Transaction is not included in the BATS List of Securities eligible for Clearing.
2. x-clear may, at its discretion, (i) elect to avoid any Single Contract (but only on or before the Business Day following the trade date of the BATS Transaction) rendering the Single Contract void *ab initio* and (ii) decline to accede to Novation either in relation to a specific BATS Product or the x-clear Member, where:
- a. the membership of the x-clear Member has been suspended by x-clear;
  - b. in the case of an x-clear Member who is a BATS Member, the x-clear Member's status as a BATS Member has been suspended or terminated by BTL;
  - c. in the case of an x-clear GCM who is not a BATS Member, the status as a BATS Member of a relevant x-clear NCM with whom the x-clear GCM has in force a GCM-NCM Agreement has been suspended or terminated by BTL;
  - d. the listing of the BATS Product in respect of which Clearing is provided has been suspended by a Listing Authority;
  - e. the BATS Transaction corresponding to the Single Contract has been cancelled or avoided for any reason (other than in accordance with circumstances falling within Clause 5.0, para. 1 (a) above);
  - f. the data submitted to x-clear in relation to the corresponding BATS Transaction by the provider of Transaction Routing is not in a format suitable for the provision of Clearing by x-clear or is not accurate;
  - g. the agreement or agreements x-clear has entered into with BTL (in relation to x-clear's provision of Clearing), the Approved Settlement System, or the provider of Transaction Routing, or, if applicable, a Link Agreement with a Co-CCP has or have been terminated or is or are otherwise not in force;
  - h. the Single Contract between x-clear and the x-clear Member representing that leg of the corresponding BATS Transaction which is opposite to the leg corresponding to the Single Contract and is the subject of x-clear's election to avoid has been cancelled pursuant to these Trading Platform Specific GTCB;
  - i. the corresponding Inter-CCP Contract, if applicable, has not been formed in accordance with the Link Agreement or has been cancelled by x-clear or the Co-CCP in accordance with the Link Agreement or otherwise;
  - j. the x-clear Member that is a party to the Single Contract is in Default or a declaration of default has been issued by BTL in respect of the BATS Member that is party to the Single Contract or corresponding BATS Transaction;

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

- k. the Approved Settlement System is not proceeding or has failed to effect Settlement of the Single Contract or corresponding Inter-CCP Contract (if applicable) in accordance with the rules of the Settlement System or otherwise;
- l. x-clear determines at its discretion, following information received from another source, that incomplete, erroneous or conflicting details have been submitted in relation to such Single Contract, the corresponding Inter-CCP Contract (if applicable) or BATS Transaction, including (without limitation) information received from BTL, a Co-CCP, any other x-clear Member or any Governmental Authority;
- m. the Single Contract or corresponding Inter-CCP Contract or BATS Transaction results or appears to result from a communications or information technology error or problem;
- n. the Single Contract or the corresponding Inter-CCP Contract or BATS Transaction is or appears to be tainted by or connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws;
- o. the Single Contract or corresponding Inter-CCP Contract or BATS Transaction is or appears to be a result of or affected by an Event of Force Majeure;
- p. the Single Contract or corresponding Inter-CCP Contract or BATS Transaction is one which any Governmental Authority, a Co-CCP (if applicable), any Approved Settlement System or BTL requires or requests that x-clear treat as void and x-clear considers, at its discretion, that compliance with such a request would be appropriate;
- q. x-clear considers at its discretion that, at the time of formation of the Single Contract, the corresponding Inter-CCP Contract (if applicable) or the corresponding BATS Transaction, the relevant x-clear Member is not in compliance with its obligations relating to the provision of Margin or Contributions; or
- r. x-clear reasonably considers at its discretion that the Clearing of the Single Contract or corresponding Inter-CCP Contract (if applicable) would not be appropriate,

and, for the avoidance of doubt, x-clear shall not incur any liability as a result of losses, damages, injuries, delays, costs or expenses incurred or sustained by the x-clear Member by reason of such avoidance of a Single Contract or by x-clear declining to accede to Novation.

3. The x-clear Member acknowledges that, in accordance with the Link Agreement (if applicable), the Co-CCP may, in certain circumstances (including, without limitation, events relating to market disorder, impossibility of performance and trade emergency) implement measures to cancel concluded Inter-CCP Contracts to which it is a party, by revoking the registration of such Inter-CCP Contracts or otherwise, whether as a result of its suspension or cancellation of the provision of services offered by it as a Central Counterparty in respect of specific BATS Products or otherwise. If such Co-CCP implements such measures, x-clear shall be entitled to cancel concluded corresponding Single Contracts to which it is a party or suspend or cancel Clearing services in respect of the BATS Products subject to those measures.

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

4. In the event that a Single Contract is cancelled, void or avoided pursuant to Clause 5.0, para. 1, 2 and 3, x-clear and the affected x-clear Member shall immediately be released from any and all rights, liabilities and obligations under the affected Single Contract and all amounts paid pursuant to the putative Single Contract shall be returned by the Buying x-clear Member to x-clear or by x-clear to the Selling x-clear Member, as the case may be, in each case without interest.

x-clear shall promptly notify BTL and the affected x-clear Member of the cancellation or avoidance of any Single Contract pursuant to Clause 5.0, para. 1, 2 and 3

### 6.0 TERMS OF SINGLE CONTRACTS

Under each Single Contract to which a Buying x-clear Member or a Co-CCP (if applicable and as buyer) is a party, the benefits, risks, rights and obligations associated with the BATS Product that is the subject of the Single Contract shall pass to the Buying x-clear Member (or the Co-CCP in the capacity of buyer) at the moment that the Single Contract is formed in accordance with these Trading Platform Specific GTCB. Where, in respect of a BATS Product, there is an entitlement to receive interest, dividends and any other distributions, such rights (referred to as "**Entitlements**" for the purposes of this Clause) shall also form part of the Single Contract, provided that the Single Contract is formed before such Entitlement has expired.

Where the Single Contract is formed on or after the expiry of an Entitlement, the Entitlement shall not form part of the Single Contract. Where income earned by the Buying x-clear Member (or the Co-CCP, if applicable and as buyer) accrues to the Selling x-clear Member (or the Co-CCP, if applicable and as seller) as a result of late delivery of the BATS Product, it shall be a term of the Single Contract that the Selling x-clear Member (or the Co-CCP, if applicable and as seller) is subject to an obligation to transfer the value accruing under the Entitlement to the Buying x-clear Member (or the Co-CCP, if applicable and as buyer).

Settlement of a Single Contract shall take place on the Intended Settlement Date or within such period after formation as is agreed between x-clear and the Approved Settlement System, all as further described in the Clearing Terms.

The Contract Terms constitute the whole agreement between x-clear and the x-clear Member with respect to a Single Contract and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of a Single Contract. The x-clear Member represents and warrants to x-clear that, in entering into each Single Contract, it does not rely on any statement, representation, assurance or warranty of x-clear or any other Person other than as expressly set out in the Contract Terms. The x-clear Member agrees that the only rights and remedies available to it arising out of or in connection with a Single Contract or their subject matter shall be solely in contract (and not in tort or otherwise), in accordance with the Contract Terms. Nothing in this Clause shall limit or exclude any liability for fraud, death or personal injury or for any other liability which by law cannot be excluded.

A Single Contract shall be regarded as a "market contract" within the meaning of Section 155 of the Companies Act 1989.

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

#### 7.0 COLLATERAL

As security for its liabilities in respect of Outstanding Contracts, each x-clear Member is required to provide Permissible Collateral by way of:

- a. Initial Margin and Variation Margin; the x-clear Member shall meet Margin calls if x-clear considers the Permissible Collateral provided by the x-clear Member to be insufficient; and
- b. Contributions,

and such provision of Permissible Collateral shall be provided in accordance with and subject to the Pledge Agreements.

Margin shall be provided by the x-clear Member on a consolidated basis taking into account all the Outstanding Contracts of that member on all Trading Platforms or equivalent positions on all other Exchanges and MTFs in respect of which x-clear provides Clearing. The nature, type, scope and parameters of Permissible Collateral, Initial Margin and Variation Margin are set out in and subject to the requirements of the Clearing Terms.

In the event that the Permissible Collateral provided as cover for Margin is determined by x-clear to be insufficient, either as a result of the decline in the value of the Permissible Collateral or an increase in the liability in respect of the Outstanding Contracts with x-clear or an x-clear Member fails to meet its obligations under this Clause 7.0, whether in whole or in part, x-clear shall, in accordance with the provisions of the Pledge Agreements, be entitled to make Margin calls and require the x-clear Member to provide additional Permissible Collateral as determined in amount and type by x-clear. Margin calls must be satisfied within 60 minutes of notification to the x-clear Member. x-clear shall be entitled to make Margin calls at any time.

If a Margin call is not satisfied in accordance with these Trading Platform Specific GTCB, x-clear is entitled to:

- a. suspend the membership of the x-clear Member in accordance with Clause 3.0 of the GTCB;
- b. treat the x-clear Member as in Default in accordance with Clause 18 of the GTCB; and
- c. realise some or all of the Permissible Collateral provided by the x-clear Member, and set off the Permissible Collateral (as x-clear values such Permissible Collateral at its discretion) or proceeds of such realisation of Permissible Collateral against any and all outstanding obligations of the x-clear Member.

Permissible Collateral in the form of Securities shall be deposited by an x-clear Member in x-clear's account or custody account as further defined in the Clearing Terms.

x-clear may at its discretion and at any time review and amend the Securities or assets accepted as Permissible Collateral by amendment to the Clearing Terms, provided that any

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

such amendment is in accordance with Clause 3.0 of the Contract for Clearing Services (English Law). x-clear shall also be entitled at any time to require the x-clear Member to substitute individual Securities with other Securities. If a particular Security is no longer accepted by x-clear as Permissible Collateral, x-clear shall grant the x-clear Member a period of two Business Days to provide substitute Securities or cash. x-clear shall periodically or otherwise and at its discretion (and as described in accordance with the Clearing Terms) perform a valuation (including applying Haircuts) of the Permissible Collateral provided by an x-clear Member, and shall be entitled to adjust such values at any time with immediate effect in respect of Outstanding Contracts outstanding at the time the adjustment is announced and in respect of Single Contracts concluded after such adjustment (or otherwise).

Each x-clear GCM shall procure from its x-clear NCM collateral in the same amount as the Permissible Collateral the x-clear GCM is required to provide to x-clear in respect of that x-clear NCM's outstanding liabilities corresponding to Outstanding Contracts to which the x-clear GCM is a party in accordance with the Contractual Relationship. x-clear shall be entitled, at its discretion, to grant exceptions to this requirement.

#### 8.0 DEFAULT FUND FOR MTF TRADING PLATFORM(S)

1. Each x-clear Member shall, in addition to the provision of Permissible Collateral provided as Margin, be obliged to make a Contribution to the MTF Default Fund.
1. Contribution requirements shall be calculated and the constituents of Permissible Collateral relevant to such requirements shall be defined in the Clearing Terms. An x-clear Member shall open the Default Fund Collateral Accounts in its name at SIX SIS for the Permissible Collateral required to be provided by way of Contributions and such accounts shall be pledged to x-clear pursuant to the Pledge Agreement for the Default Funds.
2. If at any time the total amount provided by way of a Contribution is insufficient to meet the amount required by x-clear as a result of (i) a decline in the value of the pledged Securities or (ii) an increase in the x-clear Member's liability to make a Contribution, the relevant x-clear Member shall be obliged to provide additional Permissible Collateral to meet its Contribution obligations, which shall, in the case of (i), be provided within 60 minutes of notification from x-clear, and in the case of (ii), be met within two Business Days of receipt of notification from x-clear, all in accordance with the Clearing Terms. A Contribution shall be paid promptly in response to a request by x-clear, within the time limits specified in this Clause.
3. x-clear shall be entitled to realise the Permissible Collateral provided as a Contribution and booked to the x-clear Member's Default Fund Collateral Accounts (as defined below, Clause 10) in the event of a drawdown on the Default Fund and to use the proceeds of any realisation to pay any costs incurred in connection therewith (including, without limitation, in respect of any related court proceedings). No notice of realisation is required.
4. In the event that Margin and Contributions provided by a Defaulting x-clear Member are insufficient to meet all the losses and liabilities attributable to that Defaulting x-clear Member, the Contribution provided by each non-Defaulting x-clear Member to the MTF Default Fund shall be realised *pro rata* to such non-Defaulting x-clear Member's share of

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

the total of the Contributions made by all x-clear Members to the MTF Default Fund (less the Contribution made by the Defaulting x-clear Member) as at the moment of the Default, sufficient to cover the non-Defaulting x-clear Member's *pro rata* share of the shortfall, and the proceeds of such *pro rata* realisation shall be applied to meet (along with the *pro rata* proceeds of all other non-Defaulting x-clear Members' contributions) the losses and liabilities attributable to the Defaulting x-clear Member.

5. A drawdown on the MTF Default Fund, whether or not a full or a partial drawdown and whether as a result of a Default or otherwise, shall give rise to an obligation on each x-clear Member to provide additional Permissible Collateral to restore the total amount in the MTF Default Fund prior to the drawdown in an amount not exceeding that x-clear Member's *pro rata* drawn down amount. In the event of a full drawdown on the MTF Default Fund, the x-clear Member shall provide additional Permissible Collateral according to the Pledge Agreement for the Default Funds. The x-clear Member shall provide additional Permissible Collateral pursuant to this Clause within five Business Days after a drawdown.

In the event that:

- a. Contributions of non-Defaulting x-clear Members have been realised pursuant to Clause 8.0, para.6 and excess amounts remain after proceeds arising from the process of Close-out Netting (as defined in Clause 18.5(d) of the GTCB) have been applied to meet liabilities associated with the Defaulting x-clear Member's Outstanding Contracts; or
- b. a Defaulting x-clear Member makes a Contribution after the Contributions of other x-clear Members have been realised but only in cases where such Contribution by the Defaulting x-clear Member is made pursuant to obligations arising prior to such realisation (hereinafter referred to as a "**Late Contribution**"),

then (subject to x-clear first using any such Late Contribution to meet the losses and liabilities attributable to the Defaulting x-clear Member), x-clear shall compensate the non-Defaulting x-clear Members whose Contributions have been realised from such proceeds of Close-out Netting or Late Contribution *pro rata* up to the maximum amount realised and not exceeding the total of the Contributions made by all x-clear Members at the time of the realisation.

### 9.0 PROVISIONS COMMON TO MARGIN AND CONTRIBUTIONS

The x-clear Member will act as principal and not as agent when providing Margin and making Contributions. x-clear will take no account of any right or interest which any Person other than the x-clear Member has or may have in connection with any Margin or Contribution. The x-clear Member represents and warrants to x-clear on each date on which the x-clear Member provides Permissible Collateral to x-clear by way of Margin or Contribution and on a continuing basis whilst such Margin or Contribution remains held by or on behalf of x-clear, that:

- a. the x-clear Member is the sole legal and beneficial owner of all such Permissible Collateral;

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

- b. no such Permissible Collateral is subject to any trust, agreement, arrangement or Encumbrance whatsoever; and
- c. the use or application of Securities as Permissible Collateral pursuant to the Contractual Relationship is not in breach of any of the x-clear Member's contractual obligations towards any third party, including towards any x-clear NCMs, or of Applicable Laws.

x-clear represents and warrants to the x-clear Member that any Securities provided as Margin or Contributions and returned to the x-clear Member are not subject to any trust, agreement, arrangement or Encumbrances created or granted by x-clear and that the return of such Securities to the x-clear Member is not in breach of any contractual obligation of x-clear towards any third party or of any Applicable Laws.

The x-clear Member shall be liable to x-clear for any fees, costs, losses, damages, expenses, delays or liabilities incurred or suffered by x-clear as a result of x-clear possessing, holding, perfecting the title to or otherwise being associated with, or dealing with, any Permissible Collateral provided to it by the x-clear Member by way of Margin or Contributions.

Each x-clear Member is given notice that Part VII of the Companies Act 1989 applies in relation to all Margin and Contributions and that, as a result, in accordance with the Companies Act 1989 and pursuant to these Trading Platform Specific GTCB, *inter alia*:

- a. certain of the English Courts' and insolvency officials' rights to disclaim property, onerous transactions, transactions at an undervalue and similar transactions in relation to Margin and Contributions will not apply; and
- b. neither the provision of Margin nor the making of Contributions is invalid on grounds of inconsistency with Applicable Laws of the United Kingdom relating to Insolvency.

Each x-clear Member is given notice that the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**Collateral Regulations**") (which implement Directive 2002/47/EC on financial collateral arrangements (the "**Collateral Directive**")) apply in relation to the provision of Margin and Contributions (including security arrangements made under the Pledge Agreements) and that, as a result, in accordance with the Collateral Regulations and the Collateral Directive, *inter alia*:

- a. certain Applicable Laws in the EEA relating to formalities and the registration of charges are not applicable in relation to Margin or Contributions;
- b. certain Applicable Laws in the EEA relating to Insolvency, to the extent that they restrict x-clear's enforcement of its rights in relation to Margin or Contributions, are not applicable; and
- c. the provisions in relation to Close-out Netting will take precedence notwithstanding an Insolvency of the x-clear Member.

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

for Clearing of Transactions on BATS

### 10.0 X-CLEAR COLLATERAL ACCOUNTS

Accounts and custody accounts for the deposit of collateral shall be maintained by the x-clear Member at SIX SIS as further described in the Clearing Terms.

The x-clear Member shall maintain collateral accounts for monies and securities at SIX SIS (each an "**x-clear Collateral Account**") in the name of x-clear. The x-clear Member shall at all times ensure that its x-clear Collateral Accounts show a credit balance in the amount of the deposits made by it to fulfil its obligations to provide Margin and satisfy Margin calls pursuant to Clause 7.0. Permissible Collateral provided by the x-clear Member to satisfy its Margin obligations deposited in the x-clear Collateral Accounts shall be pledged to x-clear by way of an Irregular Pledge under the Pledge Agreement for Margins.

The x-clear Member shall maintain separate accounts for monies and securities at SIX SIS ("**Dispo Collateral Accounts**") in its own name. The x-clear Member shall ensure that at the beginning of each Business Day sufficient Permissible Collateral is maintained in the Dispo Collateral Accounts of a value not less than the value of Permissible Collateral required by x-clear to satisfy the anticipated Margin requirements of the x-clear Member for the following Business Day.

At the beginning of each Business Day, x-clear shall transfer the Permissible Collateral in the x-clear Member's Dispo Collateral Accounts to the x-clear Collateral Accounts. The x-clear Member hereby instructs and authorises x-clear to effect this transfer daily and to notify SIX SIS of such authorisation.

At the end of each Business Day, x-clear shall re-transfer any Permissible Collateral that is not required to meet the x-clear Member's Margin obligations to the x-clear Member's Dispo Collateral Accounts.

Default Fund collateral accounts for monies and securities shall be maintained for each x-clear Member at SIX SIS in the name of the x-clear Member ("**Default Fund Collateral Accounts**"). Permissible Collateral deposited in the Default Fund Collateral Accounts shall be pledged to x-clear by way of a Regular Pledge under the Pledge Agreement for Default Funds.

### 11.0 ORDER OF REALISATION OF COLLATERAL

In the event of the non-performance or Default of an x-clear Member, x-clear shall be entitled to realise the Permissible Collateral provided as Margin and Contributions in the following order:

- a. Permissible Collateral provided by the Defaulting x-clear Member to satisfy its Margin obligations and equivalent obligations in respect of trades executed on all Exchanges and MTFs in respect of which x-clear provides Clearing;
- b. Contributions of the Defaulting x-clear Member to the MTF Default Fund;
- c. per calendar year, a maximum of 50% of available free reserves set aside by x-clear;

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

- d. Contributions made by non-Defaulting x-clear Members to the MTF Default Fund;
- e. additional collateral (whether or not Permissible Collateral) arising from the replenishment of the MTF Default Fund; and
- f. the remainder of x-clear's provision and its capital and reserves,

all in accordance with the Clearing Terms.

The x-clear Member acknowledges and agrees that the purpose of this Clause 11.0 and, *inter alia*, the provision of Margin and Contributions is to address and prevent the incidence of systemic risk that may arise in relation to Clearing, BATS and other trading platforms operated by BTL or other trading platforms (including the Trading Platforms).

## 12.0 SETTLEMENT

BTL will send relevant details in relation to BATS Transactions involving an x-clear Member to x-clear for Clearing, netting and the preparation of settlement instructions.

x-clear will confirm the BATS Transaction and the associated Clearing, netting and settlement instruction details to the x-clear Members or the Co-CCP (if applicable) who are counterparties to the Single Contracts, or the Inter-CCP Contract, respectively, arising from the relevant BATS Transaction. Settlement of the Single Contracts or the Inter-CCP Contract, if applicable, will be effected in the relevant central securities depository or other Approved Settlement System, all in accordance with the Clearing Terms.

The x-clear Member and the Co-CCP (if applicable) shall settle Outstanding Contracts through their participation (whether or not through settlement agents) in the Approved Settlement System and shall have appropriate settlement arrangements in place to enable Settlement of Outstanding Contracts to take place in accordance with these Trading Platform Specific GTCB and the Clearing Terms. The x-clear Member and the Co-CCP (if applicable) shall, either themselves or through settlement agents, in accordance with the rules of the Approved Settlement System, maintain at least one custody account to hold BATS Products and a cash memorandum account at a bank accepted by the Approved Settlement System for the purposes of Settlement. The x-clear Member and the Co-CCP (if applicable) or their settlement agents (if any) shall comply with the rules, requirements and obligations applicable to them pursuant to the rules of the Approved Settlement System.

x-clear denies any liability if the standards as defined in the Clearing Terms and the Rules and Regulations for communication, authentication and data security cannot be met by the Approved Settlement Systems, settlement agents etc.

The x-clear Member shall ensure that there is a sufficient quantity of BATS Products or sufficient cash, as the case may be, available to enable Settlement of Outstanding Contracts to take place on the Intended Settlement Date. If the x-clear Member does not hold a sufficient quantity of BATS Products or sufficient cash, as the case may be, to enable Settlement of Outstanding Contracts to take place on the Intended Settlement Date, the

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

### for Clearing of Transactions on BATS

provisions in Clause 13 of these Trading Platform Specific GTCB and Clause 18 of the GTCB in respect of an x-clear Member's non-performance and Default shall apply.

If the x-clear GCM wishes an x-clear NCM (in respect of which the x-clear GCM has executed a GCM-NCM Agreement) to receive delivery of the BATS Product or payment, as the case may be, as agent of the x-clear GCM, the x-clear GCM shall grant a legally valid and binding power of attorney to the x-clear NCM in favour of such x-clear NCM. The x-clear GCM shall notify x-clear of this power of attorney in writing, including a copy of such power of attorney with such notification.

An x-clear Member may only use a settlement agent for the purposes of Settlement if required or permitted by the rules of the Approved Settlement System.

x-clear will carry out settlement netting in accordance with the rules of the relevant Approved Settlement System and the Clearing Terms.

### 13.0 LATE SETTLEMENT

Where the Selling x-clear Member fails to deliver the BATS Product on the Intended Settlement Date such that Settlement of the relevant Outstanding Contract does not occur on that date, x-clear shall be entitled to perform a buy-in in accordance with the following procedures as further defined in the Clearing Terms:

- a. x-clear will start its buy-in process by submitting a buy-in notice to the Selling x-clear Member;
- b. on completion of the buy-in, x-clear will advise the Selling x-clear Member on the same day by facsimile or electronic means, providing details of the buy-in that has been effected to settle the relevant Outstanding Contract. The Selling x-clear Member shall be liable to x-clear for any difference between the price of the BATS Product under the relevant Outstanding Contract and the price paid in connection with a buy-in;
- c. x-clear is entitled to charge the Selling x-clear Member any costs incurred by x-clear (including, without limitation, expenses, commissions and other charges) or passed on to x-clear by third parties in connection with the performance of a buy-in; and
- d. without prejudice to the generality of para. c), x-clear will charge an administration fee per buy-in notice.

The payment obligations of the x-clear Member arising from the buy-in effected by x-clear shall be due and payable immediately upon notification of the same by x-clear. If the x-clear Member fails to satisfy such payment obligation, x-clear may at its discretion treat such failure as an Event of Default as defined in Clause 18.1 of the GTCB.

The Contractual Relationship shall exclusively govern late Settlement, including any processes (such as buy-in) carried out as part of late Settlement, including, but not limited to, any costs associated with such settlement. The BATS Rules shall not apply to any of the aforesaid matters.

## Trading Platform Specific General Terms and Conditions of Business SIX x-clear Ltd

for Clearing of Transactions on BATS

### **14.0 MARKET DISORDER, BAD DELIVERIES ETC.**

If BTL determines in accordance with the BATS Rules that an excessive position or unwarranted speculation or any other undesirable situation or practice is developing or has developed which is affecting or capable of affecting BATS, x-clear may at its discretion take such action as is requested of it by BTL in respect of one or more Outstanding Contracts in an x-clear Member's name as may be provided for by the BATS Rules or as may be agreed between BTL and x-clear.

### **15.0 TRADING DAYS**

The Trading Days relevant for BTL are set out in the Rules and Regulations.

**SIX x-clear Ltd**  
Brandschenkestrasse 47  
CH-8002 Zurich

Mailing address:  
P.O. Box 1758  
CH-8021 Zurich

T +41 58 399 4311  
F +41 58 499 4311  
[www.six-x-clear.com](http://www.six-x-clear.com)