

## **TERMS AND CONDITIONS OF ICBC PHYSICAL PRECIOUS METALS**

These Terms and Conditions govern the purchase of ICBC Physical Precious Metals (as defined ICBC Gold herein) transactions with Industrial and Commercial Bank of China (Malaysia) Berhad (Company No. 839839-M) of Level 10, Menara Maxis, Kuala Lumpur City Centre, 50088 Kuala Lumpur ("the Bank"). It is important that you read and understand these terms and conditions carefully and retain them for future reference. Please read these terms and conditions thoroughly before you give instruction to buy or sell ICBC Gold. By giving instruction to buy or sell ICBC Gold, you will be deemed to have accepted all the terms and conditions herein.

### **1. PURPOSE**

You may from time to time, within the business hours stipulated by the Bank ("Investment Hours") on a day which the Bank is open for business ("Business Day"), at the Bank's counter or by other means designated by the Bank, buy from and/or sell to the Bank gold bullion, gold coin or other kinds of gold of 999.9 fineness ("ICBC Gold") upon the terms and conditions as provided hereinafter.

### **2. PURCHASE OF ICBC GOLD**

- 2.1 The Bank may from time to time sell to you ICBC Gold pursuant to your purchase order in accordance with the provisions of these terms and conditions. Each purchase order shall be in such form as the Bank shall from time to time prescribe and will only be accepted by the Bank if placed by you during Investment Hours on a Business Day.
- 2.2 The making available of a transaction slip by the Bank does not amount to an offer to sell ICBC Gold to you and the Bank shall be at liberty to refuse or reject any purchase order.
- 2.3 The Bank may but is not under any obligation to maintain in its possession sufficient quantity of ICBC Gold at all times so as to ensure that it would be able to meet the requirements of the purchase order issued by you from time to time.
- 2.4 Upon acceptance of your purchase order and subject to receipt of full payment of the price of ICBC Gold, the Bank will make available ICBC Gold for your collection at the selected branches which the Bank designates and the ICBC Gold shall be collected by you within five (5) calendar days from the notification by the Bank that the ICBC Gold is ready for collection *[failing which the Bank shall be entitled to levy such fee and charges including but not limited to storage and insurance charges as the Bank shall deem fit and appropriate]* in which event the Bank has the right to withhold the ICBC Gold until you have settled all such charges due and payable to the Bank. You shall indemnify and keep the Bank fully indemnified against all claims, costs, expenses and/or damages for which you are liable to the Bank in the event of non collection of the ICBC Gold in accordance with the terms and conditions hereof.
- 2.5 No cancellation of purchase order issued at any time is allowed and no refund shall be made in respect of your failure to collect the ICBC Gold or any part thereof which has not been collected in accordance with clause 2.4.
- 2.6 In submitting an application for purchase of ICBC Gold, you represent and warrant that:-
  - (a) you are eighteen (18) years old or above and are not of unsound mind;
  - (b) you are not an undischarged bankrupt;
  - (c) you have full rights, power and authority to make purchases of ICBC Gold and to enter into and exercise your rights and perform your obligations under these terms and conditions;
  - (d) the obligations created hereto are valid, legally binding and enforceable against you;
  - (e) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining all necessary consents, if any) in order to enable you lawfully to enter into, exercise your rights and perform and comply with your obligations under these terms and conditions have been taken, fulfilled and done; and
  - (f) your entry into, exercise of your rights and/or performance of or compliance with your obligations under these terms and conditions do not and will not violate (aa) any law to which you are subject to; or (bb) any of the documents constituting it; or (cc) any other agreement to which you are a party to;

- (g) no litigation, arbitration or administrative proceeding is current, pending, threatened or anticipated which could (aa) restrain your entry into, performance of or compliance with or enforcement of your obligations under these terms and conditions, and/or any ICBC Gold purchase transaction; or (bb) have a material adverse effect on your performance or compliance with or enforcement of your obligations under these terms and conditions.

2.7 To be able to place an order for purchase and make payment for the ICBC Gold, you shall have opened and maintained a savings/current account ("Account") with the Bank. You undertake to comply with account opening rules to open a new savings/current account and guarantee that all information provided is correct, accurate, complete and valid. You undertake further that in case of any change in your information, you shall promptly provide the update to the Bank. You understand that you should read carefully, understand and agree to be bound by both (i) terms and conditions stated hereto and (ii) general terms and conditions for account opening as well as other relevant rules.

### **3. BANK'S SELLING PRICE AND PAYMENT**

- 3.1 Each purchase of ICBC Gold by you from the Bank shall be at the selling price in MYR or CNY or USD per gram or per oz as quoted by the Bank at the time of such transaction.
- 3.2 The selling price so quoted shall be determined by the Bank at the Bank's sole and absolute discretion taking into account all factors the Bank shall deem relevant including but not limited to the prevailing world and local market conditions for ICBC Gold, the exchange rate between USD or CNY or MYR and other market conditions.
- 3.3 Settlement for the price of ICBC Gold shall be completed by an immediate direct debit of your Account in MYR or CNY or USD with the Bank which you may instruct and these terms and conditions together with the duly executed order for purchase shall be conclusive and binding in respect of the purchase and shall be sufficient authority for the Bank to make such debit to your Account. You should maintain sufficient balance in your Account for the settlement and you acknowledge that insufficient balance will void the purchase of ICBC Gold and you shall bear all consequential losses. You agree that you are liable to all currency risk in the course of any settlement and the Bank has absolute discretion in the applicable exchange rate.

### **4. CONDITION OF ICBC GOLD**

ICBC Gold will be sold to you on an "as is" basis and a serialised certificate ("ICBC Gold Certificate") will be issued by the Bank in relation to the ICBC Gold sold to you.

### **5. RELIANCE AND REPETITION**

You hereby acknowledge and agree that the Bank has executed each and every ICBC Gold purchase transaction on the basis of and in full reliance on each of the representations and warranties above and hereby represent and warrant to the Bank and for the Bank's benefit that each of the representations in Clause 2.6 will be extended to cover each and every ICBC Gold purchase transaction between the Bank and you.

### **6. DECLARATION**

You hereby declare that

- (a) You have full legal capacity, rights, power and authority to enter into contracts for the purchase of ICBC Gold.
- (b) You understand that ICBC Gold price fluctuates and understand and hereby agree to bear any loss arising from the fluctuation in the price of ICBC Gold.
- (c) You recognize and acknowledge that the returns on your investment in ICBC Gold are uncertain and there is a possibility that you risk earning no returns and/or may incur losses. You hereby confirm that you have read and understand the content of these terms and conditions and the decision to purchase the ICBC Gold is based on your own judgement and/or on independent advice obtained without relying on any material provided or advice given by the Bank or its representatives. You acknowledge further that market brief and analysis provided by the Bank (if any) are for reference only and you shall exercise your own judgment over such market brief and analysis provided by the Bank.

- (d) You agree that the Bank shall not have any responsibility or liability whatsoever to you for any depletion or diminution in the value of the ICBC Gold purchased from the Bank and for any other losses, damages, cost or expenses incurred or suffered by you including but not limited to the incurrence of any tax and/or other levy (if any) with respect to the purchase or the physical delivery of the ICBC Gold.
- (e) As and when required, you shall furnish the Bank with any information/ financial statements required for the purpose of regulatory reporting obligations or for whatsoever reasons which the Bank deems reasonable or necessary.
- (f) You understand and agree that the Bank has discretion to monitor and record any verbal communication between yourself and the Bank by means of electronic devices.

## **7. CUSTOMER'S ACKNOWLEDGEMENT**

You hereby expressly acknowledge and agree to the following as express conditions of these terms and conditions in relation to any and all of the ICBC Gold purchased by you from time to time in accordance with these terms and conditions:-

- (a) You recognize and aware that the ICBC Gold is not a principle protected product and is not insured by Perbadanan Insurans Deposit Malaysia.
- (b) The Bank shall not be responsible for any delay or omission in carrying out any of your instruction to purchase of ICBC Gold.
- (c) The Bank shall be entitled to retain all profit, commission, fee, charges or other advantage from the sale of ICBC Gold as provided for on or in accordance with the terms and conditions hereof and the same shall accrue to the Bank.

## **8. INDEMNITY AND LIMITATION OF LIABILITY**

- 8.1 You hereby acknowledge and agree that you shall not hold the Bank liable for any loss, cost, charge, liability and expense (whether future or contingent) as a result of the Bank's exercising such powers, rights and authority as may be granted by you, under the terms of, or otherwise, as contemplated under these Terms and Conditions.
- 8.2 You hereby agree and undertake to indemnify and keep indemnified the Bank and hold the Bank harmless against all losses, costs, and expenses which may be incurred, levied, and/or taxed by you or the Bank with respect to the sale or purchase of ICBC Gold pursuant to the terms and conditions hereof.
- 8.3 You acknowledge and agree that the service in relation to sale of ICBC Gold may be terminated by the Bank if there is any change of law which prohibits or renders illegal the sale transaction and you shall not bring any action or claims whatsoever against the Bank to recover any losses or damages as you may suffer as a result of the termination of service.
- 8.4 The Bank reserves the right to refuse or reject any purchase or sale of ICBC Gold order at the discretion of the Bank.
- 8.5 The Bank shall not be responsible for any loss, if any, in the sale of the ICBC Gold or for any loss or depreciation in value of ICBC Gold arising from or through any cause whatsoever including but not limited to the fluctuation of ICBC Gold price and/or the fluctuation of the currency exchange rate.
- 8.6 You expressly and agree that the judgement and discretion of the Bank in respect of the time, price and terms of sale of the ICBC Gold shall be final, binding and conclusive-

## **9. DISCLOSURE**

- 9.1 The due execution of these Terms and Conditions shall constitute due and proper authority for the Bank to disclose to any government or agency or department of any government or such other party(ies) which the Bank sees fits and appropriate the details of my investment and all transactions affected by the Bank in connection therewith.
- 9.2 To enable the Bank to consider whether to provide you with any account, product or service (collectively, "service" or "services") you are required to supply to the Bank from time to time your personal details and information pertaining to any of your account held with the Bank and any of your transactions and dealings with or through the Bank ("Personal Data") and failure to do so may result in the Bank's inability to provide such service. The Personal Data will be used for considering your request

and subject to the Bank agreeing to provide such service; the Personal Data will be used in connection with the purposes set out in this clause.

9.3 You agree that the Bank may use, store, disclose, transfer, compile, match, obtain and/or exchange (all whether within or outside Malaysia) such Personal Data to, from or with any person as the Bank may consider necessary:

- (a) any member of the related or associate corporations of the Bank including but not limited to the Bank's subsidiaries, affiliates, representative and branch offices in any jurisdiction ("ICBC Group") which (i) provides group management oversight of the Bank and/or global and regional support, or (ii) carries on business within the financial services industry, or (iii) is a provider of services to other members of the ICBC Group;
- (b) any service provider or third party;
- (c) any banks, credit or charge card companies or merchants in credit or charge card enquiries;
- (d) any information gathering or processing organization conducting survey(s) or analyses or developing system applications on the Bank's behalf;
- (e) any person or organisation involved in the sending or delivering of any communication to the your last known address on our records;
- (f) any credit bureaus or credit reference agencies established by any other authorities;
- (g) any debt collection agencies that may be appointed by the Bank

for the following purposes:

- i. in connection with such service and/or in connection with matching for whatever purpose (whether or not with a view to taking any adverse action against you) any such Personal Data with the Personal Data concerning you in the Bank's possession; and/or
- ii. for the purpose of promoting, improving and furthering the provision of other services by the Bank and any member of the ICBC Group to you generally; and/or
- iii. for purposes of fraud or crime prevention, audit and debt collection and in order that services may be processed for the Bank; and/or
- iv. for purposes of investigating, reporting, preventing or otherwise in relation to money laundering, terrorist financing and criminal activities generally; and/or
- v. for purposes of any legal process initiated by or served on, the Bank (whether or not the Bank is a party); and/or
- vi. any other purposes and to such persons as may be in accordance with the Bank's general policy on disclosure of Personal Data as set out in statements, circulars, notices or other terms and conditions made available by the Bank to you from time to time.

9.4. You understand that the Bank, or any member of the ICBC Group or any third party to whom the Bank has transmitted information about the Personal Data, will be obliged to disclose such information if legally compelled to do so (whether by Malaysian law or the law of any jurisdiction to which such information is transmitted). The Bank may transfer the Personal Data outside Malaysia. Other countries may not provide the same level of protection for data as Malaysia. However, all Personal Data held by the ICBC Group or by its sub-contractors or agents will be afforded a high level of protection against any unauthorised or accidental disclosure, access or deletion. You agree to the Personal Data being used as described and that it may be transferred as stated above. The Bank may use, analyse and assess information held about you and your account, including the nature of your transactions, to give you information about products and services from members of the ICBC Group and those of selected third parties which the Bank thinks may interest you via telephone, mobile phone, electronic media, post or other means. The Bank may pass this information to other members of the ICBC Group so that they may do the same unless you have objected to such disclosure for purposes of cross-selling. Depending on the type of data, including but not limited to Personal Data and information pertaining to your account, and where it is held, then you may be entitled to request details (including copies) of the information that the Bank holds about you and to require the Bank to correct any inaccuracies. In the event the Bank determines that it is reasonable in all circumstances to comply with such access

request, the Bank may charge a fee for the providing of any data. Requests for further information should be addressed to:

Industrial and Commercial Bank of China (Malaysia) Berhad  
Retail Banking Department  
Level 10, Menara Maxis, Kuala Lumpur City Centre,  
50088 Kuala Lumpur.

- 9.5. You may, at any time, choose not to receive direct marketing information. You need to write to (ICBC Retail Banking Department) at:

Industrial and Commercial Bank of China (Malaysia) Berhad  
Retail Banking Department  
Level 10, Menara Maxis, Kuala Lumpur City Centre,  
50088 Kuala Lumpur.

with the your request and the Bank will delete the your name from its direct marketing mailing lists without charge.

## **10. SUSPENSION OF SALE**

Notwithstanding any provisions to the contrary and/or any express or implied duty or obligation on the Bank's part, it is hereby expressly agreed that the Bank shall be entitled not to accept any instruction for sale of ICBC Gold and/or to quote any price in the period during which the ICBC Gold exchange of Malaysia or other authority (ies) which the Bank is subject to, shall suspend investment in ICBC Gold on the ground of drastic fluctuation increase or decrease in the price of ICBC Gold.

## **11. CHANGE OF TERMS AND CONDITIONS**

- 11.1 You hereby agree that the Bank reserves the right at any time and from time to time to add new terms and conditions or to amend, delete, vary or modify these Terms and Conditions, in the Account, with notice and they shall become effective on such date as the Bank may decide on to adopt.
- 11.2 At the discretion of the Bank, notice of such additions or modifications or amendments may be communicated to you by displaying it at the premises of the Bank or its branch office or as determined by the Bank for a period of not less than twenty one (21) calendar days.
- 11.3 In addition to the terms and conditions of the Bank, the sale of ICBC Gold by the Bank shall be governed by and be subject to the rules, regulations and guidelines issued by Bank Negara Malaysia, the Associations of Banks Malaysia and other relevant bodies or associations whether or not such rules, regulations and guidelines have the force of law ("Rules"). If the introduction of or any change in or in the interpretation of, or any change of the Rules has, due to the Bank's compliance, the effect directly or indirectly, of:-
- (a) increasing the Bank's cost of performing the Bank's obligations hereunder;
  - (b) reducing any amount the Bank received or receivable by the Bank hereunder or the Bank's effective return hereunder or on the Bank's capital; or
  - (c) causing the Bank to make any payment or to forego any return based on any amount the Bank receive or receivable by the Bank hereunder, then the Bank may, at the Bank's discretion, terminate the sale of ICBC Gold service.

## **12 INTERPRETATION**

- 12.1 In construing these Terms and Conditions unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting the masculine shall include the feminine and/or neuter and vice versa.
- 12.2 Clause headings are included for convenience of reference only and shall be ignored in the construction of this Agreement.

## **13. NO WAIVER OF RIGHTS**

No failure or delay by the Bank in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof

preclude the Bank from any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

**14. GOVERNING LAW AND JURISDICTION**

The Laws of Malaysia shall govern and be applicable to the Terms and Conditions herein contained and all transactions in connection therewith. In relation to any legal action or proceedings arising out of or in connection with these Terms and Conditions and/or all transaction in connection thereto ("Proceedings"), you irrevocably submits to the exclusive jurisdiction of the courts of Malaysia and waives any objection to Proceedings in any such court on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.