

CONFORMED COPY

FIFTH SUPPLEMENTAL TRUST DEED

**further modifying the Trust
Deed dated 20 October 2005 relating to the
£3,000,000,000 Euro Medium Term Note Programme**

DATED 14 NOVEMBER 2016

**MARKS AND SPENCER plc
as Issuer**

and

**THE LAW DEBENTURE TRUST CORPORATION p.l.c.
as Trustee**

THIS FIFTH SUPPLEMENTAL TRUST DEED is made on 14 November 2016 **BETWEEN:**

- (1) **MARKS AND SPENCER plc**, a company incorporated with limited liability under the laws of England and Wales with company number 214436, whose registered office is at Waterside House, 35 North Wharf Road, London W2 1NW (the **Issuer**); and
- (2) **THE LAW DEBENTURE TRUST CORPORATION p.l.c.** whose registered office is at Fifth Floor, 100 Wood Street, London EC2V 7EX (the **Trustee**, which expression, where the context so admits, includes any other trustee for the time being of this Trust Deed).

WHEREAS:

- (A) This Fifth Supplemental Trust Deed is supplemental to:
 - (i) the Trust Deed dated 20 October 2005 (the **Principal Trust Deed**) made between the Issuer and the Trustee and relating to the £3,000,000,000 Euro Medium Term Note Programme established by the Issuer (the **Programme**);
 - (ii) the First Supplemental Trust Deed dated 9 November 2007 made between the Issuer and the Trustee (the **First Supplemental Trust Deed**);
 - (iii) the Second Supplemental Trust Deed dated 11 November 2011 made between the Issuer and the Trustee (the **Second Supplemental Trust Deed**);
 - (iv) the Third Supplemental Trust Deed dated 9 November 2012 made between the Issuer and the Trustee (the **Third Supplemental Trust Deed**); and
 - (v) the Fourth Supplemental Trust Deed dated 8 November 2013 made between the Issuer and the Trustee and, together with the Principal Trust Deed, the First Supplemental Trust Deed, the Second Supplemental Trust Deed and the Third Supplemental Trust Deed, the **Subsisting Trust Deeds**).
- (B) The Issuer intends to publish a modified and updated Offering Circular relating to the Programme on or around the date hereof (the **Offering Circular**).

NOW THIS FIFTH SUPPLEMENTAL TRUST DEED WITNESSES AND IT IS AGREED AND DECLARED as follows:

1. Subject as hereinafter provided in this Fifth Supplemental Trust Deed and unless there is something in the subject matter or context inconsistent therewith all words and expressions defined in the Subsisting Trust Deeds shall have the same meanings in this Fifth Supplemental Trust Deed.
2. The provisions of the Subsisting Trust Deeds are hereby modified in relation to all Series of Notes issued on or after the date of this Fifth Supplemental Trust Deed (other than any such Notes issued so as to be consolidated and form a single Series with any Notes issued prior to the date of this Fifth Supplemental Trust Deed) by the deletion of the Terms and Conditions of the Notes set out in the First Schedule thereto and the substitution therefor of the Terms and Conditions of the Notes set out in the Schedule hereto.
3. The Subsisting Trust Deeds and this Fifth Supplemental Trust Deed shall henceforth be read and construed as one document.

4. A memorandum of this Fifth Supplemental Trust Deed shall be endorsed by the Trustee on the Principal Trust Deed and by the Issuer on its duplicate thereof.
5. This Fifth Supplemental Trust Deed may be executed and delivered in counterparts, both of which, taken together, shall constitute one and the same deed and any party to this Fifth Supplemental Trust Deed may enter into the same by executing and delivering a counterpart.

IN WITNESS whereof this Fifth Supplemental Trust Deed has been executed as a deed by the Issuer and the Trustee and delivered on the date first above written.

THE SCHEDULE

TERMS AND CONDITIONS OF THE NOTES

The following are the Terms and Conditions of the Notes which will be incorporated by reference into each Global Note (as defined below) and each definitive Note, in the latter case only if permitted by the relevant stock exchange or other relevant authority (if any) and agreed by the Issuer and the relevant Dealer at the time of issue but, if not so permitted and agreed, such definitive Note will have endorsed thereon or attached thereto such Terms and Conditions. The provisions of Part A of the applicable Final Terms (or the relevant provisions thereof) will be endorsed upon, or attached to, each Global Note and definitive Note. Reference should be made to “Applicable Final Terms” for a description of the content of Final Terms which will specify which of such terms are to apply in relation to the relevant Notes.

This Note is one of a Series (as defined below) of Notes issued by Marks and Spencer plc (the **Issuer**) constituted by a trust deed (such trust deed as modified and/or supplemented and/or restated from time to time, the **Trust Deed**) dated 20 October 2005 made between the Issuer and The Law Debenture Trust Corporation p.l.c. (the **Trustee**, which expression shall include any trustee or trustees under the Trust Deed as trustees for holders of the Notes).

References herein to the **Notes** shall be references to the Notes of this Series and not to all Notes that may be issued under the Programme and shall mean:

- (a) in relation to any Notes represented by a global Note (a **Global Note**), units of the lowest Specified Denomination in the Specified Currency;
- (b) any Global Note;
- (c) any definitive Notes in bearer form (**Bearer Notes**) issued in exchange for a Global Note in bearer form; and
- (d) any definitive Notes in registered form (**Registered Notes**) (whether or not issued in exchange for a Global Note in registered form),

in each case for the time being outstanding, or as the context may require or a specific number of them.

The Notes and the Coupons (as defined below) have the benefit of an agency agreement (such agency agreement as amended and/or supplemented and/or restated from time to time, the **Agency Agreement**) dated 14 November 2016 and made between the Issuer, the Trustee and Citibank, N.A., London Branch as issuing agent and principal paying agent (the **Principal Paying Agent**, which expression shall include any successor principal paying agent) and the other paying agent named therein (together with the Principal Paying Agent, the **Paying Agents**, which expression shall include any additional or successor paying agents), Citigroup Global Markets Deutschland AG as registrar (the **Registrar**, which expression shall include any successor registrar) and the other transfer agents named therein (together with the Registrar, the **Transfer Agents**, which expression shall include any additional or successor transfer agents).

Interest bearing definitive Bearer Notes have interest coupons (**Coupons**) and, in the case of Notes which, when issued in definitive form, have more than 27 interest payments remaining, talons for further Coupons (**Talons**) attached on issue. Any reference herein to Coupons or coupons shall, unless the context otherwise requires, be deemed to include a reference to Talons or talons. Registered Notes and Global Notes do not have Coupons or Talons attached on issue.

The final terms for this Note (or the relevant provisions thereof) are set out in the provisions of Part A of the Final Terms is attached to or endorsed on this Note and supplements these Terms and Conditions (the **Conditions**). References to the **applicable Final Terms** are, unless otherwise stated, to Part A of the Final Terms (or the relevant provisions thereof) attached to or endorsed on this Note.

The Trustee acts for the benefit of the holders for the time being of the Notes (the **Noteholders**, which expression shall, in relation to any Notes represented by a Global Note, be construed as provided below) and the holders of the Coupons (the **Couponholders**, which expression shall, unless the context otherwise requires, include the holders of the Talons), in accordance with the provisions of the Trust Deed.

As used herein, **Tranche** means Notes which are identical in all respects (including as to listing) and Series means a Tranche of Notes together with any further Tranche or Tranches of Notes which are (a) expressed to be consolidated and form a single series with such Tranche and (b) identical in all respects (including as to listing) except for their respective Issue Dates, Interest Commencement Dates and/or Issue Prices.

Copies of the Trust Deed and the Agency Agreement are available for inspection during normal business hours at the registered office for the time being of the Trustee, being at 14 November 2016 at Fifth Floor, 100 Wood Street, London EC2V 7EX and at the specified office of each of the Principal Paying Agent, the Registrar and any other Paying Agents and Transfer Agents (such Principal Paying Agent, the Registrar, any other Paying Agents and Transfer Agents being together referred to as the **Agents**). If the Notes are to be admitted to trading on the regulated market of the London Stock Exchange, the applicable Final Terms will be published on the website of the London Stock Exchange through a regulatory information service. The Noteholders and the Couponholders are deemed to have notice of, are bound by and are entitled to the benefit of, all the provisions of the Trust Deed, and the applicable Final Terms which are applicable to them and are deemed to have notice of all the provisions of the Agency Agreement. The statements in these Terms and Conditions include summaries of, and are subject to, the detailed provisions of the Trust Deed.

Words and expressions defined in the Trust Deed, the Agency Agreement or used in the applicable Final Terms shall have the same meanings where used in the Conditions unless the context otherwise requires or unless otherwise stated and provided that, in the event of inconsistency between the Trust Deed and the Agency Agreement, the Trust Deed will prevail and, in the event of inconsistency between the Trust Deed or the Agency Agreement and the applicable Final Terms, the applicable Final Terms will prevail.

In the Conditions, **euro** means the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty on the Functioning of the European Union, as amended.

1. FORM, DENOMINATION AND TITLE

The Notes are in bearer form or in registered form as specified in the applicable Final Terms and, in the case of definitive Notes, serially numbered, in the currency (the **Specified Currency**) and the denominations (the **Specified Denomination(s)**) specified in the applicable Final Terms. Notes of one Specified Denomination may not be exchanged for Notes of another Specified Denomination and Bearer Notes may not be exchanged for Registered Notes and *vice versa*.

So long as the Notes are represented by a Global Note and the relevant clearing system(s) so permit, the Notes shall be tradeable only in principal amounts of at least the Specified Denomination (or if more than one Specified Denomination, the lowest Specified Denomination) provided hereon and integral multiples of the denomination provided in the relevant Final Terms.

This Note may be a Fixed Rate Note, a Floating Rate Note, a Zero Coupon Note or a combination of any of the foregoing, depending upon the Interest Basis shown in the applicable Final Terms.

Definitive Bearer Notes are serially numbered and are issued with Coupons attached, unless they are Zero Coupon Notes in which case references to Coupons and Couponholders in these Terms and Conditions are not applicable.

Subject as set out below, title to the Bearer Notes and Coupons will pass by delivery and title to the Registered Notes will pass upon registration of transfers in accordance with the provisions of the Agency Agreement. The Issuer, any Agent and the Trustee will (except as otherwise required by law) deem and treat the bearer of any Bearer Note or Coupon and the registered holder of any Registered Note as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) for all purposes and shall incur no liability for so doing, in the case of any Global Note, without prejudice to the provisions set out in the next paragraph.

For so long as any of the Notes is represented by a Global Note held on behalf of Euroclear Bank S.A./N.V. (**Euroclear**) and/or Clearstream Banking S.A. (**Clearstream, Luxembourg**), each person (other than Euroclear or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or of Clearstream, Luxembourg as the holder of a particular nominal amount of such Notes (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, the Agents and the Trustee as the holder of such nominal amount of such Notes for all purposes other than with respect

to the payment of principal or interest on such nominal amount of such Notes, for which purpose the bearer of the relevant Bearer Global Note or the registered holder of the relevant Registered Global Note shall be treated by the Issuer, any Agent and the Trustee as the holder of such nominal amount of such Notes in accordance with and subject to the terms of the relevant Global Note and the expressions **Noteholder** and **holder of Notes** and related expressions shall be construed accordingly. In determining whether a particular person is the holder of a particular nominal amount of Notes as aforesaid, the Trustee may rely on such evidence and/or information and/or certification as it shall, in its absolute discretion, think fit and, if it does so rely, such evidence and/or information and/or certification shall, in the absence of manifest error, be conclusive and binding on all concerned.

2. TRANSFERS OF REGISTERED NOTES

2.1 Transfers of interests in Registered Global Notes

Transfers of beneficial interests in Registered Global Notes will be effected by Euroclear or Clearstream, Luxembourg, as the case may be, and, in turn, by other participants and, if appropriate, indirect participants in such clearing systems acting on behalf of beneficial transferors and transferees of such interests. A beneficial interest in a Registered Global Note will, subject to compliance with all applicable legal and regulatory restrictions, be transferable for Notes in definitive form or for a beneficial interest in another Registered Global Note only in the authorised denominations set out in the applicable Final Terms and only in accordance with the rules and operating procedures for the time being of Euroclear or Clearstream, Luxembourg, as the case may be, and in accordance with the terms and conditions specified in the Agency Agreement.

2.2 Transfers of Registered Notes in definitive form

Subject as provided in Condition 2.5 below, upon the terms and subject to the conditions set forth in the Agency Agreement, a Registered Note in definitive form may be transferred in whole or in part (in the authorised denominations set out in the applicable Final Terms). In order to effect any such transfer (a) the holder or holders must (i) surrender the Registered Note for registration of the transfer of the Registered Note (or the relevant part of the Registered Note) at the specified office of the Registrar or any Transfer Agent, with the form of transfer thereon duly executed by the holder or holders thereof or his or their attorney or attorneys duly authorised in writing and (ii) complete and deposit such other certifications as may be required by the Registrar or, as the case may be, the relevant Transfer Agent and (b) the Registrar or, as the case may be, the relevant Transfer Agent must, after due and careful enquiry, be satisfied with the documents of title and the identity of the person making the request. Any such transfer will be subject to such reasonable regulations as the Issuer and the Registrar may from time to time prescribe (the initial such regulations being set out in Schedule 3 to the Agency Agreement). Subject as provided above, the Registrar or, as the case may be, the relevant Transfer Agent will, within three business days (being for this purpose a day on which banks are open for business in the city where the specified office of the Registrar or, as the case may be, the relevant Transfer Agent is located) of the request (or such longer period as may be required to comply with any applicable fiscal or other laws or regulations), authenticate and deliver, or procure the authentication and delivery of, at its specified office to the transferee or (at the risk of the transferee) send by uninsured mail, to such address as the transferee may request, a new Registered Note in definitive form of a like aggregate nominal amount to the Registered Note (or the relevant part of the Registered Note) transferred. In the case of the transfer of part only of a Registered Note in definitive form, a new Registered Note in definitive form in respect of the balance of the Registered Note not transferred will be so authenticated and delivered or (at the risk of the transferor) sent to the transferor.

2.3 Registration of transfer upon partial redemption

In the event of a partial redemption of Notes under Condition 7, the Issuer shall not be required to register the transfer of any Registered Note, or part of a Registered Note, called for partial redemption.

2.4 Costs of registration

Noteholders will not be required to bear the costs and expenses of effecting any registration of transfer as provided above, except for any costs or expenses of delivery other than by regular uninsured mail and except that the Issuer may require the payment of a sum sufficient to cover any stamp duty, tax or other governmental charge that may be imposed in relation to the registration.

2.5 Exchanges and transfers of Registered Notes generally

Holders of Registered Notes in definitive form may exchange such Notes for interests in a Registered Global Note of the same type at any time.

2.6 Closed Periods

No Noteholder may require the transfer of a Registered Note to be registered (i) during the period of 15 days ending on the date for redemption of that Note, (ii) during the period of 15 days prior to any date on which Notes may be called for redemption by the Issuer at its option pursuant to Condition 7.3, (iii) after any such Note has been called for redemption or (iv) during the period of seven days ending on (and including) any Record Date.

3. STATUS OF THE NOTES

The Notes and the relative Coupons constitute (subject to the provisions of Condition 4) unsecured and unsubordinated obligations of the Issuer and shall at all times rank *pari passu* and without any preference among themselves. The payment obligations of the Issuer under the Notes and the Coupons relating to them shall, save for such exceptions as may be provided by applicable legislation and subject to Condition 4, at all times rank at least equally with all other unsecured and unsubordinated obligations in respect of borrowed money of the Issuer, present and future.

4. NEGATIVE PLEDGE

So long as any of the Notes or Coupons remains outstanding (as defined in the Trust Deed) the Issuer will not, and will procure that none of its Subsidiaries will, create or permit to subsist any mortgage, lien, pledge or other charge upon, or with respect to, any of its present or future assets or revenues to secure any Relevant Indebtedness existing on or after the Issue Date of any person, unless the Issuer shall, simultaneously with, or prior to, the creation of any such charge take any and all action necessary to procure that all amounts payable by it under the Notes, the Coupons and the Trust Deed are secured equally and rateably by such charge to the satisfaction of the Trustee or such other security or other arrangement is provided either as the Trustee shall in its absolute discretion deem not materially less beneficial to the interests of the Noteholders or as shall be approved by an Extraordinary Resolution (as defined in the Trust Deed) of the Noteholders.

For the purposes of these Conditions:

- (a) **Relevant Indebtedness** means any indebtedness which is in the form of or represented by any bonds, notes or other securities initially offered by or on behalf of the issuer thereof primarily to persons resident outside any country in the currency of which they are denominated or payable (whether compulsorily or at the option of the holder) and for the time being quoted, listed or dealt in on any stock exchange, or any guarantee of, or indemnity in respect of any such indebtedness. Where any bonds, notes or other securities are agreed to be issued to any person (wherever resident) with a view to being offered primarily to persons resident outside any country in the currency of which they are denominated or payable, they shall be deemed to have been so offered by or on behalf of the issuer thereof; and
- (b) **Subsidiary** means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

5. INTEREST

5.1 Interest on Fixed Rate Notes

Each Fixed Rate Note bears interest on its outstanding nominal amount from (and including) the Interest Commencement Date at the rate(s) per annum equal to the Rate(s) of Interest. Interest will be payable in arrear on the Interest Payment Date(s) in each year up to (and including) the Maturity Date.

If the Notes are in definitive form, except as provided in the applicable Final Terms, the amount of interest payable on each Interest Payment Date in respect of the Fixed Interest Period ending on (but excluding) such date will amount to the Fixed Coupon Amount. Payments of interest on any Interest Payment Date will, if so specified in the applicable Final Terms, amount to the Broken Amount so specified.

As used in the Conditions, **Fixed Interest Period** means the period from (and including) an Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date.

Except in the case of Notes in definitive form where an applicable Fixed Coupon Amount or Broken Amount is specified in the applicable Final Terms, interest shall be calculated in respect of any period by applying the Rate of Interest to:

- (A) in the case of Fixed Rate Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Fixed Rate Notes represented by such Global Note; or
- (B) in the case of Fixed Rate Notes in definitive form, the Calculation Amount,

and in each case, multiplying such sum by the applicable Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Specified Currency, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Fixed Rate Note in definitive form comprises a multiple of the Calculation Amount, the amount of interest payable in respect of such Fixed Rate Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and that multiple without any further rounding.

Day Count Fraction means, in respect of the calculation of an amount of interest, in accordance with this Condition 5.1:

- (a) if “Actual/Actual (ICMA)” is specified in the applicable Final Terms:
 - (i) in the case of Notes where the number of days in the relevant period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (the **Accrual Period**) is equal to or shorter than the Determination Period during which the Accrual Period ends, the number of days in such Accrual Period divided by the product of (A) the number of days in such Determination Period and (B) the number of Determination Dates (as specified in the applicable Final Terms) that would occur in one calendar year; or
 - (ii) in the case of Notes where the Accrual Period is longer than the Determination Period during which the Accrual Period ends, the sum of:
 - (A) the number of days in such Accrual Period falling in the Determination Period in which the Accrual Period begins divided by the product of (X) the number of days in such Determination Period and (Y) the number of Determination Dates that would occur in one calendar year; and
 - (B) the number of days in such Accrual Period falling in the next Determination Period divided by the product of (X) the number of days in such Determination Period and (Y) the number of Determination Dates that would occur in one calendar year; and
- (b) if “30/360” is specified in the applicable Final Terms, the number of days in the period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (such number of days being calculated on the basis of a year of 360 days with 12 30-day months) divided by 360.

In these Conditions:

Determination Period means each period from (and including) a Determination Date to but excluding the next Determination Date (including, where either the Interest Commencement Date or the final Interest Payment Date is not a Determination Date, the period commencing on the first Determination Date prior to, and ending on the first Determination Date falling after, such date); and

sub-unit means, with respect to any currency other than euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, with respect to euro, one cent.

5.2 Interest on Floating Rate Notes

- (a) Interest Payment Dates

Each Floating Rate Note bears interest on its outstanding nominal amount from (and including) the Interest Commencement Date and such interest will be payable in arrear on either:

- (i) the Specified Interest Payment Date(s) in each year specified in the applicable Final Terms; or
- (ii) if no Specified Interest Payment Date(s) is/are specified in the applicable Final Terms, each date (each such date, together with each Specified Interest Payment Date, an **Interest Payment Date**) which falls the number of months or other period specified as the Specified Period in the applicable Final Terms after the preceding Interest Payment Date or, in the case of the first Interest Payment Date, after the Interest Commencement Date.

Such interest will be payable in respect of each Interest Period. In these Terms and Conditions, **Interest Period** means the period from (and including) an Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date.

If a Business Day Convention is specified in the applicable Final Terms and (x) if there is no numerically corresponding day on the calendar month in which an Interest Payment Date should occur or (y) if any Interest Payment Date would otherwise fall on a day which is not a Business Day, then, if the Business Day Convention specified is:

- (A) in any case where Specified Periods are specified in accordance with Condition 5.2(a)(ii) above, the Floating Rate Convention, such Interest Payment Date (i) in the case of (x) above, shall be the last day that is a Business Day in the relevant month and the provisions of II below shall apply *mutatis mutandis* or (ii) in the case of (y) above, shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event (A) such Interest Payment Date shall be brought forward to the immediately preceding Business Day and (B) each subsequent Interest Payment Date shall be the last Business Day in the month which falls the Specified Period after the preceding applicable Interest Payment Date occurred; or
- (B) the Following Business Day Convention, such Interest Payment Date shall be postponed to the next day which is a Business Day; or
- (C) the Modified Following Business Day Convention, such Interest Payment Date shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such Interest Payment Date shall be brought forward to the immediately preceding Business Day; or
- (D) the Preceding Business Day Convention, such Interest Payment Date shall be brought forward to the immediately preceding Business Day.

In these Conditions, **Business Day** means a day which is both:

- I. a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in any Additional Business Centre specified in the applicable Final Terms; and
- II. either (1) in relation to any sum payable in a Specified Currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Specified Currency (which if the Specified Currency is Australian dollars or New Zealand dollars shall be Sydney and Auckland, respectively) or (2) in relation to any sum payable in euro, a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System (the **TARGET2 System**) is open.

(b) Rate of Interest

The Rate of Interest payable from time to time in respect of Floating Rate Notes will be determined in the manner specified in the applicable Final Terms.

- (i) ISDA Determination for Floating Rate Notes

Where ISDA Determination is specified in the applicable Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will be the

relevant ISDA Rate plus or minus (as indicated in the applicable Final Terms) the Margin (if any). For the purposes of this subparagraph (i), **ISDA Rate** for an Interest Period means a rate equal to the Floating Rate that would be determined by the Principal Paying Agent under an interest rate swap transaction if the Principal Paying Agent were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc. and as amended and updated as at the Issue Date of the first Tranche of the Notes (the **ISDA Definitions**) and under which:

- (A) the Floating Rate Option is as specified in the applicable Final Terms;
 - (B) the Designated Maturity is a period specified in the applicable Final Terms;
- and

(C) the relevant Reset Date is the day specified in the applicable Final Terms. For the purposes of this subparagraph (i), and the applicable Final Terms **Floating Rate, Calculation Agent, Floating Rate Option, Designated Maturity** and **Reset Date** have the meanings given to those terms in the ISDA Definitions.

(ii) Screen Rate Determination for Floating Rate Notes

Where Screen Rate Determination is specified in the applicable Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will, subject as provided below, be either:

- (A) the offered quotation; or
- (B) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the offered quotations,

(expressed as a percentage rate per annum) for the Reference Rate (or any successor or replacement rate) which appears or appear, as the case may be, on the Relevant Screen Page (or any successor or replacement rate) as at 11.00 a.m. (London time, in the case of LIBOR, or Brussels time, in the case of EURIBOR) on the Interest Determination Date in question plus or minus (as indicated in the applicable Final Terms) the Margin (if any), all as determined by the Principal Paying Agent. If five or more of such offered quotations are available on the Relevant Screen Page (or any successor or replacement page), the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by the Principal Paying Agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

Reference Rate shall mean (i) LIBOR or (ii) EURIBOR, in each case for the Specified Currency and the relevant period, as specified in the applicable Final Terms .

The Agency Agreement contains provisions for determining the Rate of Interest in the event that the Relevant Screen Page is not available or if, in the case of (A) above, no such offered quotation appears or, in the case of (B) above, fewer than three such offered quotations appear, in each case as at the time specified in the preceding paragraph.

(c) Minimum Rate of Interest and/or Maximum Rate of Interest

If the applicable Final Terms specifies a Minimum Rate of Interest for any Interest Period, then, in the event that the Rate of Interest in respect of such Interest Period determined in accordance with the provisions of paragraph (b) above is less than such Minimum Rate of Interest, the Rate of Interest for such Interest Period shall be such Minimum Rate of Interest.

If the applicable Final Terms specifies a Maximum Rate of Interest for any Interest Period, then, in the event that the Rate of Interest in respect of such Interest Period determined in accordance with the provisions of paragraph (b) above is greater than such Maximum Rate of Interest, the Rate of Interest for such Interest Period shall be such Maximum Rate of Interest.

(d) Determination of Rate of Interest and calculation of Interest Amounts

The Principal Paying Agent will at or as soon as practicable after each time at which the Rate of Interest is to be determined, determine the Rate of Interest for the relevant Interest Period.

The Principal Paying Agent will calculate the amount of interest (the **Interest Amount**) payable on the Floating Rate Notes for the relevant Interest Period by applying the Rate of Interest to:

- (A) in the case of Floating Rate Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Notes represented by such Global Note; or
- (B) in the case of Floating Rate Notes in definitive form, the Calculation Amount,

and, in each case, multiplying such sum by the applicable Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Specified Currency, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Floating Rate Note in definitive form comprises a multiple of the Calculation Amount, the Interest Amount payable in respect of such Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and that multiple without any further rounding.

Day Count Fraction means, in respect of the calculation of an amount of interest in accordance with this Condition 5.2:

- (i) if “Actual/Actual (ISDA)” or “Actual/Actual” is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365 (or, if any portion of that Interest Period falls in a leap year, the sum of (I) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366 and (II) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365);
- (ii) if “Actual/365 (Fixed)” is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365;
- (iii) if “Actual/365 (Sterling)” is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365 or, in the case of an Interest Payment Date falling in a leap year, 366;
- (iv) if “Actual/360” is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 360;
- (v) if “30/360”, “360/360” or “Bond Basis” is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

Y₁ is the year, expressed as a number, in which the first day of the Interest Period falls;

Y₂ is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

M₁ is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

M₂ is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

D₁ is the first calendar day, expressed as a number, of the Interest Period, unless such number is 31, in which case D₁ will be 30; and

D₂ is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D₁ is greater than 29, in which case D₂ will be 30;

- (vi) if “30E/360” or “Eurobond Basis” is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1) + [30 \times (M_2 - M_1)] + (D_2 - D_1)]}{360}$$

where:

Y₁ is the year, expressed as a number, in which the first day of the Interest Period falls:

Y₂ is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

M₁ is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

M₂ is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

D₁ is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case D1 will be 30; and

D₂ is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31, in which case D2 will be 30;

- (vii) if “30E/360 (ISDA)” is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1) + [30 \times (M_2 - M_1)] + (D_2 - D_1)]}{360}$$

where:

Y₁ is the year, expressed as a number, in which the first day of the Interest Period falls:

Y₂ is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

M₁ is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

M₂ is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

D₁ is the first calendar day, expressed as a number, of the Interest Period, unless (i) that day is the last day of February or (ii) such number would be 31, in which case D1 will be 30; and

D₂ is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless (i) that day is the last day of February but not the Maturity Date or (ii) such number would be 31 and in which case D2 will be 30.

- (e) Linear Interpolation

Where Linear Interpolation is specified as applicable in respect of an Interest Period in the applicable Final Terms, the Rate of Interest for such Interest Period shall be calculated by the Principal Paying Agent by straight line linear interpolation by reference to two rates based on the relevant Reference Rate (where Screen Rate Determination is specified as applicable in the applicable Final Terms) or the relevant Floating Rate Option (where ISDA Determination is specified as applicable in the applicable Final Terms), one of which shall be determined as if the Designated Maturity were the period of time for which rates are available next shorter than the length of the relevant Interest Period and the other of which shall be determined as if the Designated Maturity were the period of time for which rates are available next longer than the length of the relevant Interest Period, provided however that if there is no rate available for a period of time next shorter or, as the case may be, next longer, then the Principal Paying Agent shall determine such rate at such time and by reference to such sources as it determines appropriate.

(f) Notification of Rate of Interest and Interest Amounts

The Principal Paying Agent will cause the Rate of Interest and each Interest Amount for each Interest Period and the relevant Interest Payment Date to be notified promptly to the Issuer, the Trustee and any stock exchange on which the relevant Floating Rate Notes are for the time being listed (and in any event no later than the first day of the relevant Interest Period) and notice thereof to be published in accordance with Condition 14 as soon as possible after their determination but in no event later than the fourth London Business Day thereafter. Each Interest Amount and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without prior notice in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified to each stock exchange on which the relevant Floating Rate Notes are for the time being listed and to the Noteholders in accordance with Condition 14. For the purposes of this paragraph, the expression **London Business Day** means a day (other than a Saturday or a Sunday) on which banks and foreign exchange markets are open for general business in London.

(g) Determination or Calculation by Trustee

If for any reason at any relevant time the Principal Paying Agent defaults in its obligation to determine the Rate of Interest or the Principal Paying Agent defaults in its obligation to calculate any Interest Amount in accordance with Condition 5.2(a) or Condition 5.2(b) above, as the case may be, and in each case in accordance with Condition 5.2(d) above, the Trustee (or a person appointed by it for the purpose) shall determine the Rate of Interest at such rate as, in its absolute discretion (having such regard as it shall think fit to the foregoing provisions of this Condition, but subject always to any Minimum Rate of Interest or Maximum Rate of Interest specified in the applicable Final Terms), it shall deem fair and reasonable in all the circumstances or, as the case may be, the Trustee shall calculate the Interest Amount(s) in such manner as it shall deem fair and reasonable in all the circumstances and each such determination or calculation shall be deemed to have been made by the Principal Paying Agent. In making any such determination or calculation, the Trustee (at the expense of the Issuer) may appoint and rely on a determination or calculation by a calculation agent (which shall be an investment bank or other suitable entity of international repute). The Trustee shall have no liability to any person in connection with any determination or calculation it is required to make pursuant to this Condition.

(h) Certificates to be final

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition 5.2, whether by the Principal Paying Agent or, if applicable, the Trustee, (or any agent appointed by the Trustee) shall (in the absence of wilful default, bad faith or manifest error or proven error) be binding on the Issuer, the Principal Paying Agent, the other Agents and all Noteholders and Couponholders and (in the absence as aforesaid) no liability to the Issuer, the Noteholders or the Couponholders shall attach to the Principal Paying Agent or the Trustee (or any agent appointed by the Trustee) in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions.

5.3 Accrual of interest

Each Note (or in the case of the redemption of part only of a Note, that part only of such Note) will cease to bear interest (if any) from the date for its redemption unless, upon due presentation thereof, payment of principal is improperly withheld or refused. In such event, interest will continue to accrue as well after as before judgement as provided in the Trust Deed at the Rate of Interest for the Relevant Date (as defined in Condition 8).

5.4 Adjustment of Rate of Interest for Fixed Rate Notes and Floating Rate Notes

If a Step Up Rating Change and/or Step Down Rating Change is specified in the applicable Final Terms, the following terms relating to the Rate of Interest for the Notes shall apply:

- (i) The Rate of Interest payable on the Notes will be subject to adjustment from time to time in the event of a Step Up Rating Change or a Step Down Rating Change, as the case may be.
- (ii) Subject to paragraphs (iv) and (vii) below, from and including the first Interest Payment Date following the date of a Step Up Rating Change, if any, the Rate of Interest (in the case of Fixed Rate Notes) or the Margin (in the case of Floating Rate Notes) payable on the Notes shall be increased by the Step Up Margin specified in the applicable Final Terms.

- (iii) Subject to paragraphs (iv) and (vii) below, in the event of a Step Down Rating Change following a Step Up Rating Change, with effect from and including the first Interest Payment Date following the date of such Step Down Rating Change, the Rate of Interest (in the case of Fixed Rate Notes) or the Margin (in the case of Floating Rate Notes) payable on the Notes shall be decreased by the Step Up Margin back to the initial Rate of Interest (in the case of Fixed Rate Notes) or the initial Margin (in the case of Floating Rate Notes).
- (iv) If a Step Up Rating Change and, subsequently, a Step Down Rating Change occur during the same Fixed Interest Period (in the case of Fixed Rate Notes) or the same Interest Period (in the case of Floating Rate Notes), the Rate of Interest (in the case of Fixed Rate Notes) or the Margin (in the case of Floating Rate Notes) on the Notes shall be neither increased nor decreased as a result of either such event.
- (v) The Issuer shall use all reasonable efforts to maintain credit ratings for its senior unsecured long-term debt from both Rating Agencies. If, notwithstanding such reasonable efforts, either Rating Agency fails to or ceases to assign a credit rating to the Issuer's senior unsecured long-term debt, the Issuer shall use all reasonable efforts to obtain a credit rating of its senior unsecured long-term debt from a substitute rating agency that shall be a Statistical Rating Agency, and references in this Condition 5.4 to Moody's or S&P, as the case may be, or the credit ratings thereof, shall be to such substitute rating agency or, as the case may be, the equivalent credit ratings thereof.
- (vi) The Issuer will cause the occurrence of a Step Up Rating Change or a Step Down Rating Change giving rise to an adjustment to the Rate of Interest payable on the Notes pursuant to this Condition 5.4 to be notified to the Trustee and the Principal Paying Agent and notice thereof to be published in accordance with Condition 14 as soon as reasonably practicable after the occurrence of such Step Up Rating Change or Step Down Rating Change, but in no event later than the fifth London Business Day thereafter.
- (vii) A Step Up Rating Change (if any) and a Step Down Rating Change (if any), may only occur once each during the term of the Notes and shall give rise to an adjustment to the Rate of Interest payable on the Notes.
- (viii) If the rating designations employed by Moody's or S&P are changed from those which are described in this Condition 5.4, or if a rating is procured from a Statistical Rating Agency, the Issuer shall determine, with the agreement of the Trustee (not to be unreasonably withheld or delayed) the rating designations of Moody's or S&P or such Statistical Rating Agency as are most equivalent to the prior rating designations of Moody's or S&P or such Statistical Rating Agency, as the case may be.

Where:

Moody's means Moody's Investors Service Ltd., or its successor, established in the European Union and registered under Regulation (EC) No. 1060/2009 (as amended);

Rating Agency means either Moody's or S&P and **Rating Agencies** means both of them;

S&P means Standard and Poor's Credit Market Services Europe Limited, or its successor, established in the European Union and registered under Regulation (EC) No. 1060/2009 (as amended);

Statistical Rating Agency means Fitch Ratings Ltd. or its successor or such other rating agency as may be proposed by the Issuer and approved by the Trustee, such approval not to be unreasonably withheld or delayed;

Step Down Rating Change means the first public announcement by both Rating Agencies, after a Step Up Rating Change, that the credit rating of the Issuer's senior unsecured long-term debt is at least Baa3 in the case of Moody's and is at least BBB- in the case of S&P. For the avoidance of doubt, any further increase in the credit rating of the Issuer's senior unsecured long-term debt above Baa3 in the case of Moody's or above BBB- in the case of S&P shall not constitute a Step Down Rating Change; and

Step Up Rating Change means the first public announcement by either Rating Agency or both Rating Agencies of a decrease in the credit rating of the Issuer's senior unsecured long-term debt to below Baa3 in the case of Moody's or below BBB- in the case of S&P. For the avoidance of doubt, any further decrease in the credit rating of the Issuer's senior unsecured long-term debt from below Baa3 in

the case of Moody's or from below BBB- in the case of S&P shall not constitute a Step Up Rating Change.

6. PAYMENTS

6.1 Method of payment

Subject as provided below:

- (a) payments in a Specified Currency other than euro will be made by credit or transfer to an account in the relevant Specified Currency (which, in the case of a payment in Japanese yen to a non-resident of Japan, shall be a non-resident account) maintained by the payee with a bank in the principal financial centre of the country of such Specified Currency (which, if the Specified Currency is Australian dollars or New Zealand dollars, shall be Sydney and Auckland, respectively); and
- (b) payments will be made in euro by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee.

Payments will be subject in all cases to (i) any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 8 and (ii) any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the U.S. Internal Revenue Code of 1986 (the **Code**) or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or (without prejudice to the provisions of Condition 8) any law implementing an intergovernmental approach thereto.

6.2 Presentation of definitive Bearer Notes and Coupons

Payments of principal in respect of definitive Bearer Notes will (subject as provided below) be made in the manner provided in Condition 6.1 above only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of definitive Bearer Notes, and payments of interest in respect of definitive Bearer Notes will (subject as provided below) be made as aforesaid only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of Coupons, in each case at the specified office of any Paying Agent outside the United States (which expression, as used herein, means the United States of America (including the States and the District of Columbia and its possessions)).

Fixed Rate Notes in definitive bearer form (other than Long Maturity Notes (as defined below)) should be presented for payment together with all unmatured Coupons appertaining thereto (which expression shall for this purpose include Coupons falling to be issued on exchange of matured Talons), failing which the amount of any missing unmatured Coupon (or, in the case of payment not being made in full, the same proportion of the amount of such missing unmatured Coupon as the sum so paid bears to the sum due) will be deducted from the sum due for payment. Each amount of principal so deducted will be paid in the manner mentioned above against surrender of the relative missing Coupon at any time before the expiry of 10 years after the Relevant Date (as defined in Condition 8) in respect of such principal (whether or not such Coupon would otherwise have become void under Condition 9) or, if later, five years from the date on which such Coupon would otherwise have become due, but in no event thereafter.

Upon any Fixed Rate Note in definitive bearer form becoming due and repayable prior to its Maturity Date, all unmatured Talons (if any) appertaining thereto will become void and no further Coupons will be issued in respect thereof.

Upon the date on which any Floating Rate Note or Long Maturity Note in definitive bearer form becomes due and repayable, unmatured Coupons and Talons (if any) relating thereto (whether or not attached) shall become void and no payment or, as the case may be, exchange for further Coupons shall be made in respect thereof. A **Long Maturity Note** is a Fixed Rate Note (other than a Fixed Rate Note which on issue had a Talon attached) whose nominal amount on issue is less than the aggregate interest payable thereon provided that such Note shall cease to be a Long Maturity Note on the Interest Payment Date on which the aggregate amount of interest remaining to be paid after that date is less than the nominal amount of such Note.

If the due date for redemption of any definitive Bearer Note is not an Interest Payment Date, interest (if any) accrued in respect of such Note from (and including) the preceding Interest Payment Date or, as

the case may be, the Interest Commencement Date shall be payable only against surrender of the relevant definitive Bearer Note.

6.3 Payments in respect of Bearer Global Notes

Payments of principal and interest (if any) in respect of Notes represented by any Global Note in bearer form will (subject as provided below) be made in the manner specified above in relation to definitive Bearer Notes and otherwise in the manner specified in the relevant Global Note against presentation or surrender, as the case may be, of such Global Note at the specified office of the Principal Paying Agent. A record of each payment made against presentation or surrender of any Global Note in bearer form, distinguishing between any payment of principal and any payment of interest, will be made on such Global Note by the Principal Paying Agent and such record shall be *prima facie* evidence that the payment in question has been made.

6.4 Payments in respect of Registered Notes

Payments of principal in respect of each Registered Note (whether or not in global form) will be made against presentation and surrender of the Registered Note at the specified office of the Registrar or any of the Paying Agents. Such payments will be made by transfer to the Designated Account (as defined below) of the holder (or the first named of joint holders) of the Registered Note appearing in the register of holders of the Registered Notes maintained by the Registrar (the **Register**) (i) where in global form, at the close of the business day (being for this purpose a day on which Euroclear and Clearstream, Luxembourg are open for business) before the relevant due date, and (ii) where in definitive form, at the close of business on the third business day (being for this purpose a day on which banks are open for business in the city where the specified office of the Registrar is located) before the relevant due date. For these purposes, **Designated Account** means the account (which, in the case of a payment in Japanese Yen to a non-resident of Japan, shall be a non-resident account) maintained by a holder with a Designated Bank and identified as such in the Register and **Designated Bank** means (in the case of payment in a Specified Currency other than euro) a bank in the principal financial centre of the country of such Specified Currency (which, if the Specified Currency is Australian dollars or New Zealand dollars, shall be Sydney and Auckland, respectively) and (in the case of a payment in euro) any bank which processes payments in euro.

Payments of interest in respect of each Registered Note will be made by transfer on the due date to the Designated Account of the holder (or the first named of joint holders) of the Registered Note appearing in the Register (i) where in global form, at the close of the business day (being for this purpose a day on which Euroclear and Clearstream, Luxembourg are open for business) before the relevant due date, and (ii) where in definitive form, at the close of business on the fifteenth day (whether or not such fifteenth day is a business day) before the relevant due date (the **Record Date**).

Payment of the interest due in respect of each Registered Note on redemption will be made in the same manner as payment of the nominal amount of such Registered Note as set out in the first sentence of Condition 6.4 above.

No commissions or expenses shall be charged to the holders by the Registrar in respect of any payments of principal or interest in respect of Registered Notes.

None of the Issuer or the Agents will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the Registered Global Notes or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

6.5 General provisions applicable to payments

The holder of a Global Note shall be the only person entitled to receive payments in respect of Notes represented by such Global Note and the Issuer will be discharged by payment to, or to the order of, the holder of such Global Note in respect of each amount so paid. Each of the persons shown in the records of Euroclear or Clearstream, Luxembourg as the beneficial holder of a particular nominal amount of Notes represented by such Global Note must look solely to Euroclear or Clearstream, Luxembourg, as the case may be, for his share of each payment so made by the Issuer to, or to the order of, the holder of such Global Note.

Notwithstanding the foregoing provisions of this Condition, if any amount of principal and/or interest in respect of Bearer Notes is payable in U.S. dollars, such U.S. dollar payments of principal and/or interest in respect of such Notes will be made at the specified office of a Paying Agent in the United States if:

- (a) the Issuer has appointed Paying Agents with specified offices outside the United States with the reasonable expectation that such Paying Agents would be able to make payment in U.S. dollars at such specified offices outside the United States of the full amount of principal and interest on the Bearer Notes in the manner provided above when due;
- (b) payment of the full amount of such principal and interest at all such specified offices outside the United States is illegal or effectively precluded by exchange controls or other similar restrictions on the full payment or receipt of principal and interest in U.S. dollars; and
- (c) such payment is then permitted under United States law without involving, in the opinion of the Issuer, adverse tax consequences to the Issuer.

6.6 Payment Day

If the date for payment of any amount in respect of any Note or Coupon is not a Payment Day, the holder thereof shall not be entitled to payment until the next following Payment Day in the relevant place and shall not be entitled to further interest or other payment in respect of such delay. For these purposes, **Payment Day** means any day which (subject to Condition 9) is:

- (a) a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in:
 - (i) in the case of Notes in definitive form only, the relevant place of presentation; and
 - (ii) any Additional Financial Centre specified in the applicable Final Terms; and
- (b) either (i) in relation to any sum payable in a Specified Currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Specified Currency (which if the Specified Currency is Australian dollars or New Zealand dollars shall be Sydney and Auckland, respectively) or (ii) in relation to any sum payable in euro, a day on which the TARGET2 System is open.

6.7 Interpretation of principal and interest

Any reference in these Terms and Conditions to principal in respect of the Notes shall be deemed to include, as applicable:

- (a) any additional amounts which may be payable with respect to principal under Condition 8;
- (b) the Final Redemption Amount of the Notes;
- (c) the Early Redemption Amount of the Notes;
- (d) the Optional Redemption Amount(s) (if any) of the Notes;
- (e) in relation to Zero Coupon Notes, the Amortised Face Amount (as defined in Condition 7.6); and
- (f) any premium and any other amounts (other than interest) which may be payable by the Issuer under or in respect of the Notes.

Any reference in these Terms and Conditions to interest in respect of the Notes shall be deemed to include, as applicable, any additional amounts which may be payable with respect to interest under Condition 8.

6.8 Payments subject to laws

All payments are subject in all cases to any applicable laws, regulations and directives in the place of payment, but without prejudice to the provisions of Condition 8. No commission or expenses shall be charged to the Noteholders or Couponholders in respect of such payments.

7. REDEMPTION AND PURCHASE

7.1 Redemption at maturity

Unless previously redeemed or purchased and cancelled as specified below, each Note will be redeemed by the Issuer at its Final Redemption Amount specified in the applicable Final Terms in the relevant Specified Currency on the Maturity Date specified in the applicable Final Terms.

7.2 Redemption for tax reasons

Subject to Condition 7.6, the Notes may be redeemed at the option of the Issuer in whole, but not in part, at any time (if this Note is not a Floating Rate Note) or on any Interest Payment Date (if this Note is a Floating Rate Note), on giving not less than the minimum period and not more than the maximum period of notice specified in the applicable Final Terms to the Trustee, the Principal Paying Agent and, in accordance with Condition 14, the Noteholders (which notice shall be irrevocable), if the Issuer delivers to the Trustee a certificate signed by two Directors of the Issuer stating that:

- (a) on the occasion of the next payment due under the Notes the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 8 as a result of any change in or amendment to, the laws or regulations of a Tax Jurisdiction (as defined in Condition 8) or any change in the application or interpretation of such laws or regulations, which change or amendment becomes effective on or after the date on which agreement is reached to issue the first Tranche of the Notes; and
- (b) such obligation or treatment, as the case may be, cannot be avoided by the Issuer taking reasonable measures available to it,

PROVIDED THAT no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts or give effect to such treatment, as the case may be, were a payment in respect of the Notes then due.

The Trustee shall be entitled to accept the certificate as sufficient evidence of the satisfaction of the conditions precedent set out above, in which case it shall be conclusive and binding on the Noteholders and the Couponholders.

Notes redeemed pursuant to this Condition 7.2 will be redeemed at their Early Redemption Amount referred to in Condition 7.6 below together (if appropriate) with interest accrued to (but excluding) the date of redemption.

7.3 Redemption at the option of the Issuer (Issuer Call)

If Issuer Call is specified as being applicable in the applicable Final Terms, the Issuer may, having given not less than the minimum period and not more than the maximum period of notice specified in the applicable Final Terms to the Trustee, the Principal Paying Agent (and, in the case of a redemption of Registered Notes, the Registrar), the competent authority or stock exchange on which the Notes are listed, if any (if required by such competent authority or stock exchange) and, in accordance with Condition 14, the Noteholders (which notices shall be irrevocable and shall specify the date fixed for redemption), redeem all or some only of the Notes then outstanding on the Optional Redemption Date(s) as specified in the applicable Final Terms and at the Optional Redemption Amount(s) together, if appropriate, with interest accrued to (but excluding) the relevant Optional Redemption Date(s). Upon expiry of such notice the Issuer shall be bound to redeem the Notes accordingly. Any such redemption must be of a nominal amount not less than the Minimum Redemption Amount and not more than the Maximum Redemption Amount, in each case as may be specified in the applicable Final Terms. The Optional Redemption Amount will either be the specified percentage of the nominal amount of the Notes stated in the applicable Final Terms or, if either Spens Amount or Make Whole Redemption Amount is specified in the applicable Final Terms, will be:

- (a) if Spens Amount is specified as being applicable in the applicable Final Terms, the higher of (i) 100 per cent. of the nominal amount outstanding of the Notes to be redeemed and (ii) the nominal amount outstanding of the Notes to be redeemed multiplied by the price expressed as a percentage (rounded up to four decimal places), as reported to the Issuer and the Trustee by the Determination Agent, at which the Gross Redemption Yield (assuming for this purpose that the Notes are to be redeemed at, unless otherwise so specified in the applicable Final Terms, the Final Redemption Amount on the Maturity Date) on such Notes on the

Reference Date is equal to the Gross Redemption Yield (determined by reference to the middle market price) at the Quotation Time on the Reference Date of the Reference Bond, plus the Redemption Margin; or

- (b) if Make Whole Redemption Amount is specified as applicable in the applicable Final Terms, the higher of (i) 100 per cent. of the nominal amount outstanding of the Notes to be redeemed and (ii) the sum of the present values expressed as a percentage (rounded up to four decimal places) of the nominal amount outstanding of the Notes to be redeemed and of each payment of Remaining Term Interest on such Notes (exclusive of interest accrued to the date on which such Notes are to be redeemed by the Issuer pursuant to this Condition 7.3) and such present values shall be calculated by discounting such amounts to such date of redemption on an annual basis (assuming a 360-day year consisting of twelve 30-day months or, in the case of an incomplete month, the number of days elapsed) at the Reference Bond Rate, plus the Redemption Margin,

all as determined by the Determination Agent.

In this Condition:

DA Selected Bond means a government security or securities selected by the Determination Agent as having an actual or interpolated maturity comparable with the remaining term of the Notes, that would be utilised, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities denominated in the Specified Currency and of a comparable maturity to the remaining term of the Notes;

Determination Agent means an investment bank or financial institution of international standing selected by the Issuer after consultation with the Trustee;

Gross Redemption Yield means, with respect to a security, the gross redemption yield on such security, expressed as a percentage and calculated by the Determination Agent on the basis set out by the United Kingdom Debt Management Office in the paper "Formulae for Calculating Gilt Prices from Yields", page 5, Section One: Price/Yield Formulae "Conventional Gilts"; "Double dated and Undated Gilts with Assumed (or Actual) Redemption on a Quasi-Coupon Date" (published 8 June 1998, as amended or updated from time to time) on a semi-annual compounding basis (converted to an annualised yield and rounded up (if necessary) to four decimal places) or on such other basis as the Trustee may (in its absolute discretion) approve;

Quotation Time shall be as set out in the applicable Final Terms;

Redemption Margin shall be as set out in the applicable Final Terms;

Reference Bond shall be as set out in the applicable Final Terms or the DA Selected Bond;

Reference Bond Price means, with respect to any Reference Date, (a) the arithmetic average of the Reference Government Bond Dealer Quotations for such Reference Date, after excluding the highest and lowest such Reference Government Bond Dealer Quotations, or (b) if the Determination Agent obtains fewer than four such Reference Government Bond Dealer Quotations, the arithmetic average of all such quotations;

Reference Bond Rate means, with respect to any Reference Date, the rate per annum equal to the annual or semi-annual yield (as the case may be) to maturity or interpolated yield to maturity (on the relevant day count basis) of the Reference Bond, assuming a price for the Reference Bond (expressed as a percentage of its nominal amount) equal to the Reference Bond Price for such Reference Date;

Reference Date shall be as set out in the applicable Final Terms or as set out in the relevant notice of redemption;

Reference Government Bond Dealer means each of five banks selected by the Issuer, or their affiliates, which are (A) primary government securities dealers, and their respective successors, or (B) market makers in pricing corporate bond issues;

Reference Government Bond Dealer Quotations means, with respect to each Reference Government Bond Dealer and any date of redemption, the arithmetic average, as determined by the Determination Agent, of the bid and offered prices for the Reference Bond (expressed in each case as a percentage of

its nominal amount) at the Quotation Time on the Reference Date quoted in writing to the Determination Agent by such Reference Government Bond Dealer; and

Remaining Term Interest means, in respect of Notes to be redeemed by the Issuer pursuant to this Condition 7.3, each scheduled payment of interest on such Notes for the remaining term of such Notes determined on the basis of the rate of interest applicable to such Notes from and including the date on which such Notes are to be redeemed by the Issuer pursuant to this Condition 7.3.

In the case of a partial redemption of Notes, the Notes to be redeemed (**Redeemed Notes**) will (i) in the case of Redeemed Notes represented by definitive Notes, be selected individually by lot, not more than 10 days prior to the date fixed for redemption and (ii) in the case of Redeemed Notes represented by a Global Note, be selected in accordance with the rules of Euroclear and/or Clearstream, Luxembourg (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in nominal amount, at their discretion). In the case of Redeemed Notes represented by definitive Notes, a list of the serial numbers of such Redeemed Notes will be published in accordance with Condition 14 not less than 10 days prior to the date fixed for redemption. The aggregate nominal amount of Redeemed Notes represented by definitive Notes shall bear the same proportion to the aggregate nominal amount of all Redeemed Notes as the aggregate nominal amount of definitive Notes outstanding bears to the aggregate nominal amount of the Notes outstanding, in each case on the Selection Date, provided that, such first mentioned nominal amount shall, if necessary, be rounded downwards to the nearest integral multiple of the Specified Denomination and the aggregate nominal amount of Redeemed Notes represented by a Global Note shall be equal to the balance of the Redeemed Notes.

7.4 Redemption at par at the option of the Issuer (Issuer Par Call)

If Issuer Par Call is specified as being applicable in the applicable Final Terms, the Issuer may, having given not less than the minimum period nor more than the maximum period of notice specified in the applicable Final Terms to the Trustee, the Principal Paying Agent (and, in the case of Registered Notes, the Registrar) and the Noteholders in accordance with Condition 14 (which notice shall be irrevocable and shall specify the date fixed for redemption), redeem all or some only of the Notes then outstanding at their nominal amount together with interest accrued to (but excluding) the date fixed for redemption at any time during the period starting on (and including) the Issuer Par Call Date specified in the applicable Final Terms and ending on (but excluding) the Maturity Date. Any such redemption must be of a nominal amount not less than the Minimum Redemption Amount and not more than the Maximum Redemption Amount, in each case as may be specified in the applicable Final Terms.

In the case of a partial redemption of Notes, the Notes to be redeemed (**Redeemed Notes**) will (i) in the case of Redeemed Notes represented by definitive Notes, be selected individually by lot, not more than 30 days prior to the date fixed for redemption and (ii) in the case of Redeemed Notes represented by a Global Note, be selected in accordance with the rules of Euroclear and/or Clearstream, Luxembourg (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in nominal amount, at their discretion). In the case of Redeemed Notes represented by definitive Notes, a list of the serial numbers of such Redeemed Notes will be published in accordance with Condition 14 not less than 10 days prior to the date fixed for redemption.

7.5 Redemption at the option of the Noteholders

(a) General Investor Put

If General Investor Put is specified as being applicable in the applicable Final Terms, upon the holder of this Note giving to the Issuer, in accordance with Condition 14, not less than the minimum period nor more than the maximum period of notice specified in the applicable Final Terms, the Issuer will, upon the expiry of such notice, redeem such Note on the Optional Redemption Date and at the Optional Redemption Amount together, if applicable, with interest accrued to (but excluding) the relevant Optional Redemption Date.

If this Note is in definitive form and held outside Euroclear and Clearstream, Luxembourg, to exercise the right to require redemption of this Note the holder of this Note must deliver such

Note, on any Business Day (as defined in Condition 5) falling within the notice period at the specified office of any Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes), accompanied by a duly signed and completed notice of exercise in the form (for the time being current) obtainable from any specified office of any Paying Agent or, as the case may be, the Registrar (a **Put Notice**) and in which the holder must specify a bank account to which payment is to be made under this Condition and, in the case of Registered Notes, the nominal amount thereof to be redeemed and, if less than the full nominal amount of the Registered Notes so surrendered is to be redeemed, an address to which a new Registered Note in respect of the balance of such Registered Notes is to be sent subject to and in accordance with the provisions of Condition 2.2. If this Note is represented by a Global Note or is in definitive form and held through Euroclear or Clearstream, Luxembourg, to exercise the right to require redemption of this Note the holder of this Note must, within the notice period, give notice to the Principal Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes) of such exercise in accordance with the standard procedures of Euroclear and Clearstream, Luxembourg (which may include notice being given on his instruction by Euroclear or Clearstream, Luxembourg or any common depositary for them to the Principal Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes) by electronic means) in a form acceptable to Euroclear and Clearstream, Luxembourg from time to time and, if this Note is represented by a Global Note, at the same time present or procure the presentation of the relevant Global Note to the Principal Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes) for notation accordingly.

Any Put Notice given by a holder of any Note pursuant to this Condition 7.5(a) shall be irrevocable except where prior to the due date of redemption an Event of Default shall have occurred and the Trustee has declared the Notes to be due and payable pursuant to Condition 10 in which event such holder, at its option, may elect by notice to the Issuer to withdraw the notice given pursuant to this Condition 7.5(a).

(b) Change of Control Investor Put

If Change of Control Investor Put is specified as being applicable in the Final Terms the following provisions shall apply to the Notes:

- (i) If at any time while any Note remains outstanding, a Restructuring Event occurs and within the Restructuring Period (i) (if at the time that Restructuring Event occurs there are Rated Securities), a Rating Downgrade in respect of that Restructuring Event occurs or (ii) (if at such time there are no Rated Securities), a Negative Rating Event in respect of that Restructuring Event occurs (in either case, a **Put Event**), the holder of each Note will have the option (unless, prior to the giving of the Put Event Notice referred to below, the Issuer gives notice under Condition 7.2 or Condition 7.3) to require the Issuer to redeem or, at the Issuer's option, purchase (or procure the purchase of) each such Note on the Put Date (as defined below) at its nominal amount (the **Optional Redemption Amount**) together with (or, where purchased, together with an amount equal to) interest accrued to (but excluding) the Put Date.
- (ii) Promptly upon, and in any event within 21 days after, the Issuer becoming aware that a Put Event has occurred, the Issuer shall, and at any time upon the Trustee becoming similarly so aware the Trustee may, and if so requested by the holders of at least one-quarter in nominal amount of the Notes then outstanding or if so directed by an Extraordinary Resolution of the Noteholders, the Trustee shall (subject in each case to the Trustee being indemnified and/or secured to its satisfaction), give notice (a **Put Event Notice**) to the Noteholders in accordance with Condition 14 specifying the nature of the Put Event and the procedure for exercising the option contained in this Condition 7.5(b).
- (iii) If this Note is in definitive form and held outside Euroclear and Clearstream, Luxembourg, to exercise the option to require redemption of this Note under this Condition 7.5(b), the holder of this Note must deliver such Note, on any Payment Day (as defined in Condition 6.6) in the city of the specified office of the relevant Paying Agent (in the case of Bearer Notes) or Registrar (in the case of Registered Notes)

falling within the period (the **Put Period**) of 30 days after a Put Event Notice is given, at the specified office of any Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes), accompanied by a duly signed and completed Put Notice (as defined in Condition 7.5(a)).

- (iv) The Note (in the case of Bearer Notes) should be delivered together with all Coupons appertaining thereto maturing after the date seven days after the expiry of the Put Period (the **Put Date**) failing which either (i) in the case of Fixed Rate Notes (other than Long Maturity Notes), the Paying Agent will require payment of an amount equal to the face value of any such missing Coupon or (ii) in the case of Floating Rate Notes or Long Maturity Notes, any such missing coupon will be void. In the case of Fixed Rate Notes (other than Long Maturity Notes), any amount so paid will be reimbursed in the manner provided in Condition 6 against presentation and surrender of the relevant missing Coupon (or any replacement therefor issued pursuant to Condition 11) any time after such payment, but before the expiry of the period of five years from the date on which such Coupon would have become due, but not thereafter.
- (v) The Paying Agent or Registrar (as the case may be) to which such Note and Put Notice are delivered will issue to the Noteholder concerned a non-transferable receipt in respect of the Note so delivered or, in the case of a Global Note or a Note in definitive form held through Euroclear or Clearstream, Luxembourg, notice so received. Payment in respect of any such Note so delivered will be made, if the holder duly specifies a bank account to which payment is to be made under this Condition and, in the case of Registered Notes, the nominal amount thereof to be redeemed and, if less than the full nominal amount of the Registered Notes so surrendered is to be redeemed, an address to which a new Registered Note in respect of the balance of such Registered Notes is to be sent subject to and in accordance with the provisions of Condition 2.2.
- (vi) If this Note is represented by a Global Note or is in definitive form and held through Euroclear or Clearstream, Luxembourg, to exercise the right to require redemption of this Note the holder of this Note must, within the notice period, give notice to the Principal Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes) of such exercise in accordance with the standard procedures of Euroclear and Clearstream, Luxembourg (which may include notice being given on his instruction by Euroclear or Clearstream, Luxembourg or any common depositary for them to the Principal Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes) by electronic means) in a form acceptable to Euroclear and Clearstream, Luxembourg from time to time and, if this Note is represented by a Global Note, at the same time present or procure the presentation of the relevant Global Note to the Principal Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes) for notation accordingly.
- (vii) Any Put Notice given by a holder of any Note pursuant to this Condition 7.5(b) shall be irrevocable except where prior to the due date of redemption an Event of Default shall have occurred and the Trustee has declared the Notes to be due and payable pursuant to Condition 10 in which event such holder, at its option, may elect by notice to the Issuer to withdraw the notice given pursuant to this Condition 7.5(b). The Issuer shall redeem or, at the option of the Issuer, purchase (or procure the purchase of) the relevant Notes on the Put Date unless previously redeemed or purchased.

If 80 per cent. or more in nominal amount of the Notes then outstanding have been redeemed or purchased pursuant to the foregoing provisions of this Condition 7.5(b), the Issuer may, on not less than the minimum period nor more than the maximum period of notice specified in the applicable Final Terms to the Noteholders given within 30 days after the Put Date, redeem, at its option, the remaining Notes as a whole at Optional Redemption Amount plus interest accrued to but excluding the date of such redemption.
- (viii) For the purpose of this Condition:

A **Negative Rating Event** shall be deemed to have occurred if (i) the Issuer does not, either prior to or not later than 21 days after the relevant Restructuring Event, seek, and thereupon use all reasonable endeavours to obtain, a rating of the Notes or any other unsecured and unsubordinated debt of the Issuer (or any Subsidiary of the Issuer which is guaranteed on an unsecured and unsubordinated basis by the Issuer) having an initial maturity of five years or more (**Rateable Debt**) from a Rating Agency or (ii) if it does so seek and use such endeavours, it is unable, as a result of such Restructuring Event to obtain such a rating of at least investment grade BBB- (in the case of Standard and Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. (**S&P**)), Baa3 (in the case of Moody's Investors Service, Inc. (**Moody's**)) or BBB- (in the case of Fitch Ratings Ltd. (**Fitch Ratings**)), or their respective equivalents for the time being), provided that a Negative Rating Event shall not be deemed to have occurred in respect of a particular Restructuring Event if the Rating Agency declining to assign a rating of at least investment grade (as defined above) does not announce or publicly confirm or inform the Trustee in writing at its request that its declining to assign a rating of at least investment grade was the result, in whole or in part, of any event or circumstance comprised in or arising as a result of, or in respect of, the applicable Restructuring Event (whether or not the Restructuring Event shall have occurred at the time such investment grade rating is declined);

Rated Securities means the Notes so long as they shall have an effective rating from any Rating Agency and otherwise any unsecured and unsubordinated debt of the Issuer having an initial maturity of five years or more which is rated by one of the Rating Agencies;

Rating Agency means S&P and its successors or affiliates or Moody's and its successors or affiliates or Fitch Ratings and its successors or affiliates or any other rating agency of equivalent standing specified by the Issuer from time to time and agreed in writing by the Trustee;

A **Rating Downgrade** shall be deemed to have occurred in respect of a Restructuring Event if the current rating whether provided by a Rating Agency at the invitation of the Issuer or by its own volition assigned to the Rated Securities by any Rating Agency (i) is withdrawn and is not within the Restructuring Period replaced by a rating of another Rating Agency at least equivalent to that which was current immediately before the occurrence of the Restructuring Event or (ii) is reduced from an investment grade rating BBB- (in the case of S&P) /Baa3 (in the case of Moody's) /BBB- (in the case of Fitch) (or their respective equivalents for the time being) or better to a non-investment grade rating BB+ (in the case of S&P) /Ba1 (in the case of Moody's) /BB+ (in the case of Fitch) (or their respective equivalents for the time being) or worse; provided that a Rating Downgrade otherwise arising by virtue of a particular reduction in rating shall not be deemed to have occurred in respect of a particular Restructuring Event if the Rating Agency making the reduction in rating to which this definition would otherwise apply does not announce or publicly confirm or inform the Trustee in writing at its request that the reduction was the result, in whole or part, of any event or circumstance comprised in or arising as a result of, or in respect of, the applicable Restructuring Event (whether or not the applicable Restructuring Event shall have occurred at the time of the Rating Downgrade);

A **Restructuring Event** shall be deemed to have occurred at each time (whether or not approved by the Board of Directors of the Issuer) that any person or any persons acting in concert (as defined in the City Code on Takeovers and Mergers), other than a holding company (as defined in Section 1159 of the Companies Act 2006 as amended) whose shareholders are or are to be substantially similar to the pre-existing shareholders of the Issuer, or any person or persons acting on behalf of any such person(s), at any time is/are or become(s) interested (within the meaning of Part 22 of the Companies Act 2006) in (A) more than 50 per cent. of the issued or allotted ordinary share capital of the Issuer or (B) such number of shares in the capital of the Issuer carrying more than 50 per cent. of the voting rights normally exercisable at a general meeting of the Issuer; and

Restructuring Period means the period ending 90 days after the public announcement of the Restructuring Event having occurred (or such longer period in which the Rated Securities or Rateable Debt, as the case may be, is or are under consideration (announced publicly within the first mentioned period) for rating review or, as the case may be, rating by a Rating Agency).

If the rating designations employed by any of S&P, Moody's or Fitch Ratings are changed from those which are described in paragraph (ii) of the definition of "Negative Rating Event" above, or if a rating is procured from another Rating Agency, the Issuer shall determine, with the agreement of an independent financial advisor, selected by the Issuer and to whom the Trustee does not reasonably object, the rating designations of S&P, Moody's, Fitch Ratings or such other Rating Agency (as appropriate) as one most equivalent to the prior rating designations of S&P, Moody's or Fitch Ratings, and this Condition 7.5(b) shall be construed accordingly.

7.6 Early Redemption Amounts

For the purpose of Condition 7.2 and Condition 10.1:

- (a) each Note (other than a Zero Coupon Note) will be redeemed at its Early Redemption Amount; and
- (b) each Zero Coupon Note will be redeemed at an amount (the **Amortised Face Amount**) calculated in accordance with the following formula:

$$\text{Early Redemption Amount} = \text{RP} \times (1 + \text{AY})^y$$

where:

RP means the Reference Price; and

AY means the Accrual Yield expressed as a decimal; and

y is the Day Count Fraction specified in the applicable Final Terms which will be either (i) 30/360 (in which case the numerator will be equal to the number of days (calculated on the basis of a 360-day year consisting of 12 months of 30 days each) from (and including) the Issue Date of the first Tranche of the Notes to (but excluding) the date fixed for redemption or (as the case may be) the date upon which such Note becomes due and repayable and the denominator will be 360) or (ii) Actual/360 (in which case the numerator will be equal to the actual number of days from (and including) the Issue Date of the first Tranche of the Notes to (but excluding) the date fixed for redemption or (as the case may be) the date upon which such Note becomes due and repayable and the denominator will be 360) or (iii) Actual/365 (in which case the numerator will be equal to the actual number of days from (and including) the Issue Date of the first Tranche of the Notes to (but excluding) the date fixed for redemption or (as the case may be) the date upon which such Note becomes due and repayable and the denominator will be 365).

7.7 Purchases

The Issuer or its Holding Company (as defined in the Trust Deed) or any of their respective Subsidiaries may (subject as provided above) at any time purchase Notes (provided that, in the case of definitive Bearer Notes, all unmatured Coupons and Talons appertaining thereto are purchased therewith) in the open market or otherwise in any manner or at any price. Such Notes may be held, reissued, resold or at the option of the Issuer or the relevant Holding Company or Subsidiary surrendered to the Principal Paying Agent for cancellation.

7.8 Cancellation

All Notes purchased by or on behalf of the Issuer, its Holding Company (as defined in the Trust Deed) or any of its Subsidiaries may be surrendered for cancellation, in the case of Bearer Notes, by surrendering each such Note together with all unmatured Coupons and all unexchanged Talons to the Principal Paying Agent and, in the case of Registered Notes, by surrendering the certificate representing such Notes to the Registrar and, in each case, if so surrendered, shall, together with all Notes redeemed by the Issuer, be cancelled forthwith (together with all unmatured Coupons and unexchanged Talons

attached thereto or surrendered therewith). Any Notes so surrendered for cancellation may not be reissued or resold and the obligations of the Issuer in respect of any such Notes shall be discharged.

7.9 Late payment on Zero Coupon Notes

If the amount payable in respect of any Zero Coupon Note upon redemption of such Zero Coupon Note under Condition 7.1, 7.2, 7.3, 7.4 or 7.5 above or upon its becoming due and repayable as provided in Condition 10 is improperly withheld or refused, the amount due and repayable in respect of such Zero Coupon Note shall be the amount calculated as provided in Condition 7.6(b) as though the references therein to the date fixed for the redemption or the date upon which such Zero Coupon Note becomes due and payable were replaced by references to the date which is the earlier of:

- (a) the date on which all amounts due in respect of such Zero Coupon Note have been paid; and
- (b) five days after the date on which the full amount of the moneys payable in respect of such Zero Coupon Notes has been received by the Principal Paying Agent or the Registrar and notice to that effect has been given to the Noteholders in accordance with Condition 14.

8. TAXATION

All payments of principal and interest in respect of the Notes and Coupons by or on behalf of the Issuer will be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of any Tax Jurisdiction unless such withholding or deduction is required by law. In such event, the Issuer will pay such additional amounts as shall be necessary in order that the net amounts received by the holders of the Notes or Coupons after such withholding or deduction shall equal the respective amounts of principal and interest which would otherwise have been receivable in respect of the Notes or Coupons, as the case may be, in the absence of such withholding or deduction; except that no such additional amounts shall be payable with respect to any Note or Coupon:

- (a) presented for payment by or by a third party on behalf of a holder who (i) could avoid such withholding or deduction by complying or procuring that any third party complies with any statutory requirements or by making or procuring that any third party makes a declaration of non-residence or other similar claim for exemption to any tax authority; or (ii) is liable for such taxes or duties in respect of such Note or Coupon by reason of his having some connection with a Tax Jurisdiction other than the mere holding of such Note or Coupon; or
- (b) presented for payment more than 30 days after the Relevant Date (as defined below) except to the extent that the holder thereof would have been entitled to an additional amount on presenting the same for payment on such thirtieth day assuming that day to have been a Payment Day (as defined in Condition 6.6) in the place of surrender.

In these Conditions:

- (i) **Tax Jurisdiction** means the United Kingdom or any political subdivision or any authority thereof or therein having power to tax; and
- (ii) the **Relevant Date** means the date on which such payment first becomes due, except that, if the full amount of the moneys payable has not been duly received by the Principal Paying Agent, the Trustee or the Registrar, as the case may be, on or prior to such due date, it means the date on which, the full amount of such moneys having been so received, notice to that effect is duly given to the Noteholders in accordance with Condition 14.

9. PRESCRIPTION

The Notes (whether in bearer or registered form) and Coupons will become void unless presented for payment within a period of 10 years (in the case of principal) and five years (in the case of interest) after the Relevant Date (as defined in Condition 8) therefor.

There shall not be included in any Coupon sheet issued on exchange of a Talon any Coupon the claim for payment in respect of which would be void pursuant to this Condition or Condition 6.2 or any Talon which would be void pursuant to Condition 6.2.

10. EVENTS OF DEFAULT

10.1 Events of Default

The Trustee at its discretion may, and if so requested in writing by the holders of at least one-quarter in nominal amount of the Notes then outstanding or if so directed by an Extraordinary Resolution of the Noteholders shall, (subject in each case to being indemnified to its satisfaction) give notice to the Issuer that the Notes are, and they shall accordingly forthwith become, immediately due and repayable at their nominal amount, together with accrued interest as provided in the Trust Deed, in any of the following events (each, an **Event of Default**):

- (a) if default is made in the payment of any principal or interest due in respect of the Notes or any of them and the default continues for a period of ten Business Days; or
- (b) if the Issuer fails to perform or observe any of its other obligations under these Conditions or the Trust Deed and (except in any case where the Trustee considers the matter which is the subject of the obligation to be incapable of performance or observation when no continuation or notice as is hereinafter mentioned will be required) the failure continues for the period of 30 days (or such longer period as the Trustee may permit) next following the service by the Trustee on the Issuer (as the case may be) of notice requiring the same to be remedied; or
- (c) any Indebtedness for Borrowed Money (as defined below) of the Issuer amounting in aggregate to not less than £20,000,000 or its equivalent in other currencies becomes due and repayable prematurely by reason of an event of default (however described) or the Issuer fails to make payment in respect thereof on the due date for such payment as extended by any applicable grace period as originally provided or the security for any such Indebtedness For Borrowed Money becomes enforceable and steps are taken to enforce the same or if default is made by the Issuer in making any payment due under any guarantee and/or indemnity given by it in respect of any Indebtedness For Borrowed Money amounting in aggregate to not less than £20,000,000 or its equivalent in other currencies save in any such case to the extent that the Issuer certifies in a certificate signed by two of its Directors to the Trustee that there is a bona fide dispute as to whether payment or repayment is due; or
- (d) if an administrator is appointed or any order is made by a competent court or resolution passed for winding up, or an administration order is made in relation to, the Issuer or if the Issuer stops payment of its obligations generally or ceases to carry on its business or substantially all thereof except that a winding up or a stopping of payment or cessation of business for the purpose of a reconstruction, union, transfer, merger or amalgamation of the Issuer the terms of which have previously been approved in writing by the Trustee, shall not constitute an Event of Default; or
- (e) if an encumbrancer takes possession or an administrative or other receiver is appointed over the whole or any material part of the assets of the Issuer or if a distress or execution is levied or enforced upon or sued out against any material part of the assets of the Issuer and is not removed, discharged or paid out within 60 days; or
- (f) if the Issuer is unable to pay its debts within the meaning of section 123(2) of the Insolvency Act of Great Britain or makes a general assignment for the benefit of its creditors;

PROVIDED THAT, in the case of any such event other than those described in subparagraph (a) above, the Trustee shall have certified to the Issuer that the such event is, in its opinion, materially prejudicial to the interests of the Noteholders.

For the purposes of this Condition **Indebtedness for Borrowed Money** means (a) borrowed money; and (b) liabilities under any bond, note, bill, debenture, loan stock or other security issued in respect of acceptance credit facilities or as consideration for assets or services, but excluding such liabilities incurred in relation to the acquisition of goods or services in the ordinary course of trading.

10.2 Enforcement

- (a) The Trustee may at any time, at its discretion and without notice, take such proceedings against the Issuer as it may think fit to enforce the provisions of the Trust Deed, the Notes and the Coupons, but it shall not be bound to take any such proceedings or any other action in relation to the Trust Deed, the Notes or the Coupons unless (a) it shall have been so directed by an Extraordinary Resolution of the

Noteholders or so requested in writing by the holders of at least one-quarter in nominal amount of the Notes then outstanding and (b) it shall have been indemnified and/or secured to its satisfaction.

- (b) No Noteholder shall be entitled to institute proceedings directly against the Issuer or prove in the winding-up of the Issuer unless the Trustee, having become bound to do so, fails to do so within a reasonable period and such failure is continuing.

11. REPLACEMENT OF NOTES, COUPONS AND TALONS

Should any Note, Coupon or Talon be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Principal Paying Agent (in the case of Bearer Notes or Coupons) or the Registrar (in the case of Registered Notes) upon payment by the claimant of such costs and expenses as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Notes, Coupons or Talons must be surrendered before replacements will be issued.

12. AGENTS

The initial Agents are set out above. If any additional Paying Agents are appointed in connection with any Series, the names of such Paying Agents will be specified in Part B of the applicable Final Terms.

The Issuer is entitled, with the prior written approval of the Trustee, to vary or terminate the appointment of any Agent and/or appoint additional or other Agents and/or approve any change in the specified office through which any Agent acts, provided that:

- (a) there will at all times be a Principal Paying Agent, a Paying Agent, a Transfer Agent and a Registrar;
- (b) so long as the Notes are listed on any stock exchange or admitted to listing by any other relevant authority, there will at all times be a Paying Agent (in the case of Bearer Notes) and a Transfer Agent (in the case of Registered Notes) with a specified office in such place as may be required by the rules and regulations of the relevant stock exchange (or any other relevant authority)

In addition, the Issuer shall forthwith appoint a Paying Agent having a specified office in New York City in the circumstances described in Condition 6.5. Notice of any variation, termination, appointment or change in Paying Agents will be given to the Noteholders promptly by the Issuer in accordance with Condition 14.

In acting under the Agency Agreement, the Agents act solely as agents of the Issuer and, in certain circumstances specified therein, of the Trustee and do not assume any obligation to, or relationship of agency or trust with, any Noteholders or Couponholders. The Agency Agreement contains provisions permitting any entity into which any Agent is merged or converted or with which it is consolidated or to which it transfers all or substantially all of its assets to become the successor agent.

13. EXCHANGE OF TALONS

On and after the Interest Payment Date on which the final Coupon comprised in any Coupon sheet matures, the Talon (if any) forming part of such Coupon sheet may be surrendered at the specified office of the Principal Paying Agent or any other Paying Agent in exchange for a further Coupon sheet including (if such further Coupon sheet does not include Coupons to (and including) the final date for the payment of interest due in respect of the Note to which it appertains) a further Talon, subject to the provisions of Condition 9.

14. NOTICES

All notices regarding the Bearer Notes will be valid if published in a leading English language daily newspaper published in London or such other English language daily newspaper with general circulation in Europe as the Trustee may approve. It is expected that publication will normally be made in the *Financial Times*. The Issuer shall also ensure that notices are duly published in a manner which complies with the rules and regulations of any stock exchange or relevant authority on which the Notes are for the time being listed or by which they have been admitted to listing. Any such notice will be deemed to have been given on the date of the first publication or, where required to be published in more than one newspaper, on the date of the first publication in all required newspapers. If publication as provided above is not practicable, notice will be given in such other manner, and shall be deemed to

have been given on such date, as the Trustee may approve. Couponholders will be deemed for all purposes to have notice of the contents of any notice given to the Noteholders in accordance with this Condition.

All notices regarding the Registered Notes will be deemed to be validly given if sent by first class mail or (if posted to an address overseas) by airmail to the holders (or the first named of joint holders) at their respective addresses recorded in the Register and will be deemed to have been given on the fourth day after mailing and, in addition, for so long as any Registered Notes are listed by or on a competent authority or stock exchange and the rules of that competent authority or stock exchange so require, such notice will be published in a daily newspaper of general circulation in the places or places required by that competent authority or stock exchange.

Until such time as any definitive Notes are issued, there may, so long as any Global Notes representing the Notes are held in their entirety on behalf of Euroclear and/or Clearstream, Luxembourg, be substituted for such publication in such newspaper(s) the delivery of the relevant notice to Euroclear and/or Clearstream, Luxembourg for communication by them to the holders of the Notes and, in addition, for so long as any Notes are listed on a stock exchange and the rules of that stock exchange (or any other relevant authority) so require, such notice will be published in a daily newspaper of general circulation in the place or places required by those rules. Any such notice shall be deemed to have been given to the holders of the Notes on such day as is specified in the applicable Final Terms after the day on which the said notice was given to Euroclear and/or Clearstream, Luxembourg.

Notices to be given by any Noteholder shall be in writing and given by lodging the same, together with the relative Note or Notes, with the Principal Paying Agent (in the case of Bearer Notes) or the Registrar (in the case of Registered Notes). Whilst any of the Notes are represented by a Global Note, such notice may be given by any holder of a Note to the Principal Paying Agent or the Registrar through Euroclear and/or Clearstream, Luxembourg, as the case may be, in such manner as the Principal Paying Agent, the Registrar and Euroclear and Clearstream, Luxembourg, as the case may be, may approve for this purpose.

15. MEETINGS OF NOTEHOLDERS, MODIFICATION, WAIVER AND SUBSTITUTION

The Trust Deed contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of the Notes, the Coupons or any of the provisions of the Trust Deed. Such a meeting may be convened by the Issuer or the Trustee and shall be convened by the Issuer if required in writing by Noteholders holding not less than 10 per cent. in nominal amount of the Notes for the time being remaining outstanding. The quorum at any such meeting for passing an Extraordinary Resolution is one or more persons holding or representing a clear majority in nominal amount of the Notes for the time being outstanding, or at any adjourned meeting one or more persons being or representing Noteholders whatever the nominal amount of the Notes so held or represented, except that at any meeting the business of which includes the modification of certain provisions of the Notes or the Coupons (including but not limited to (i) modifying the dates of maturity or redemption of the Notes, any Instalment Date or any date for payment of principal or interest or Interest Amount thereon, (ii) reducing or cancelling the nominal amount of, or any premium payable on redemption of, the Notes, (iii) reducing the rate or rates of interest payable in respect of the Notes or varying the method or basis of calculating the rate or rates or amount of interest or the basis for calculating any Interest Amount in respect of the Notes, (iv) altering the currency of payment or denomination of the Notes or the Coupons, (v) if a Minimum and/or a Maximum Rate of Interest or Redemption Amount is shown hereon, reducing any such Minimum and/or Maximum, (vi) varying any method of, or basis for, calculating the Final Redemption Amount, the Early Redemption Amount or the Optional Redemption Amount, including the method of calculating the Amortised Face Amount, or (vii) modifying the provisions concerning the quorum required at any meeting of Noteholders or the majority required to pass the Extraordinary Resolution), the quorum shall be one or more persons holding or representing not less than two-thirds in nominal amount of the Notes for the time being outstanding, or at any adjourned such meeting one or more persons holding or representing not less than one-third in nominal amount of the Notes for the time being outstanding. An Extraordinary Resolution passed at any meeting of the Noteholders shall be binding on all the Noteholders, whether or not they are present at the meeting, and on all Couponholders.

The Trust Deed provides for a resolution, with or without notice, in writing signed by or on behalf of the holder or holders of not less than 75 per cent. of the nominal amount of the Notes for the time being outstanding to be as effective and binding as if it were an Extraordinary Resolution duly passed at a meeting of the Noteholders.

The Trust Deed provides that a resolution which in the opinion of the Trustee affects the Notes of more than one series but does not give rise to a conflict of interest between the holders of Notes of any of the series so affected shall be deemed to have been duly passed if passed at a single meeting of the holders of the Notes of all the Series so affected.

The Trustee may agree, without the consent of the Noteholders or Couponholders, to any modification of, or to the waiver or authorisation of any breach or proposed breach of, any of the provisions of the Notes or the Trust Deed, or determine, without any such consent as aforesaid, that any Event of Default or potential Event of Default shall not be treated as such, where, in any such case, it is not, in the opinion of the Trustee, materially prejudicial to the interests of the Noteholders so to do or may agree, without any such consent as aforesaid, to any modification which is of a formal, minor or technical nature or to correct a manifest error or an error which is, in the opinion of the Trustee, proven. Any such modification shall be binding on the Noteholders and the Couponholders and any such modification shall be notified to the Noteholders in accordance with Condition 14 as soon as practicable thereafter.

In connection with the exercise by it of any of its trusts, powers, authorities and discretions (including, without limitation, any modification, waiver, authorisation or determination), the Trustee shall have regard to the general interests of the Noteholders as a class (but shall not have regard to any interests arising from circumstances particular to individual Noteholders or Couponholders whatever their number) and, in particular but without limitation, shall not have regard to the consequences of any such exercise for individual Noteholders or Couponholders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political sub-division thereof and the Trustee shall not be entitled to require, nor shall any Noteholder or Couponholder be entitled to claim, from the Issuer, the Trustee or any other person any indemnification or payment in respect of any tax consequences of any such exercise upon individual Noteholders or Couponholders except to the extent already provided for in Condition 8 and/or any undertaking or covenant given in addition to, or in substitution for, Condition 8 pursuant to the Trust Deed.

The Trustee may, without the consent of the Noteholders, agree with the Issuer to the substitution in place of the Issuer (or of any previous substitute under this Condition) as the principal debtor under the Notes, Coupons and the Trust Deed of another company, subject to (a) the Trustee being satisfied that the interests of the Noteholders will not be materially prejudiced by the substitution and (b) certain other conditions set out in the Trust Deed being complied with. In the case of such a substitution the Trustee may agree, without the consent of the Noteholders or the Couponholders, to a change of the law governing the Notes, the Coupons, the Talons and/or the Trust Deed provided that such change would not in the opinion of the Trustee be materially prejudicial to the interests of the Noteholders.

16. INDEMNIFICATION OF THE TRUSTEE AND TRUSTEE CONTRACTING WITH THE ISSUER AND TRUSTEE'S RETIREMENT AND REMOVAL

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including provisions relieving it from taking action unless indemnified and/or secured to its satisfaction.

The Trust Deed also contains provisions pursuant to which the Trustee is entitled, inter alia, (a) to enter into business transactions with the Issuer and/or any of its Subsidiaries and to act as trustee for the holders of any other securities issued or guaranteed by, or relating to, the Issuer and/or any of its Subsidiaries, (b) to exercise and enforce its rights, comply with its obligations and perform its duties under or in relation to any such transactions or, as the case may be, any such trusteeship without regard to the interests of, or consequences for, the Noteholders or Couponholders and (c) to retain and not be liable to account for any profit made or any other amount or benefit received thereby or in connection therewith.

The Trust Deed contains provisions allowing the Trustee to retire at any time on giving not less than 60 days' prior written notice to the Issuer without giving any reason and without being responsible for any

Expenses (as defined in the Trust Deed) incurred by such retirement. The Noteholders may by Extraordinary Resolution remove any trustee or trustees for the time being of the Notes. The Trust Deed provides that the retirement or removal of any such Trustee shall not become effective until a successor trustee (being a trust corporation) is appointed. The Trust Deed provides that, in the event of the Trustee giving notice of retirement or being removed by Extraordinary Resolution under the Trust Deed, the Issuer shall use its best endeavours to procure that a new trustee is appointed as soon as reasonably practicable. If no appointment has become effective within 60 days of such notice or Extraordinary Resolution, the Trust Deed provides that the Trustee shall be entitled to appoint a trust corporation. Notice of any such change shall (if required by the Trustee) be given to the Noteholders in accordance with Condition 14 as soon as practicable thereafter.

17. FURTHER ISSUES

The Issuer is at liberty from time to time without the consent of the Noteholders or the Couponholders to create and issue further notes or bonds (whether in bearer or registered form) either (a) ranking *pari passu* in all respects (or in all respects save for the first payment of interest thereon) and so that the same shall be consolidated and form a single series with the outstanding notes or bonds of any series (including the Notes) constituted by the Trust Deed or any supplemental deed or (b) upon such terms as to ranking, interest, conversion, redemption and otherwise as the Issuer may determine at the time of the issue.

18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No rights are conferred on any person under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Note, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

19. GOVERNING LAW

The Trust Deed, the Agency Agreement, the Notes, the Coupons and any non-contractual obligations arising out of or in connection with the Trust Deed, the Agency Agreement, the Notes and the Coupons are governed by, and shall be construed in accordance with, English law.

SIGNATORIES

EXECUTED AS A DEED by)
MARKS AND SPENCER plc)
acting by a director and authorised signatory) **JOANNA HAWKES**
in the presence of:)

Witness's Signature: **GRAEME GILBERT**
Name:
Address:

THE COMMON SEAL of)
THE LAW DEBENTURE)
TRUST CORPORATION p.l.c.) **JULIAN MASON-JEBB**
was affixed to this deed in the)
presence of:) **LAURA CALLAGHAN**