

المرفقات: ٠١

الموضوع: شراء البنك معادن من بائع، مع ضمان الواعد بالشراء

### قرار الهيئة الشرعية رقم (٦٥)

الحمد لله رب العالمين، والصلاة والسلام على نبينا محمد وعلى آله وصحبه أجمعين، وبعد:  
فإن الهيئة الشرعية لبنك البلاد في جلستها الثامنة والثلاثين بعد المائتين المنعقدة يوم الاثنين  
١٤٢٧/٠٤/٠٣ هـ الموافق ٢٠٠٦/٠٥/٠١ م، في مدينة الرياض بالمقر الرئيس للبنك قد  
اطلعت على منتج شراء البنك معادن من بائع، مع ضمان الواعد بالشراء، واتفاقية  
الضمان المتعلقة به المرفوعة من مجموعة الخزينة.

حيث إن شراء البنك لمعادن أساسية أو ثمينة من مورد ذي تصنيف ائتماني ضعيف ينطوي  
على مخاطر عالية على البنك؛ فقد وثق البنك شراءه للمعادن من هؤلاء الموردين بوثيقة  
ضمان مقدمة من الطرف الذي سيشتري من البنك، تفيد -هذه الوثيقة- ضمان تسليم  
المورد للمعادن التي اشتراها البنك منه في الموعد المحدد.

وبعد المداولة والمناقشة ودراسة الاتفاقية وإجراء التعديلات اللازمة عليها قررت الهيئة  
إجازتها بالصيغة المرفقة بالقرار، وتؤكد الهيئة على ما يأتي:

١. يجب أن يلتزم البنك في عمليات البيع والشراء، بالعقود والنماذج وإجراءات العمل  
المجازة بالقرار (١١).

٢. ترى الهيئة أن الأفضل ألا يبيع البنك المعادن على الضامن وإنما يبيع على طرف آخر،  
وفي حال تعذر البيع على غير الضامن -بعد استفراغ الوسع والطاقة في محاولة البيع  
على غيره-، فإنه يجب على البنك أن يحصل على تعهد كتابي من الضامن بعدم بيعه  
المعدن على المورد -المضمون-؛ سداً لذريعة الربا، والتواطؤ المؤدي إلى العينة الثلاثية.  
وفق الله الجميع لهده، وجعل العمل في رضاه، والله أعلم، وصلى الله على نبينا محمد وعلى  
آله وصحبه وسلم.

### الهيئة الشرعية

أ.د. عبدالله بن موسى العمار (عضواً) د. عبدالعزيز بن فوزان الفوزان (عضواً)

د. محمد بن سعود العصيمي (عضواً وأميناً)

د. يوسف بن عبدالله الشيبلي (عضواً) ص.ب. 140 P.O. Box  
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THIS PERFORMANCE GUARANTEE is entered into on the                      day of  
200[ ]

BETWEEN

- (1) HSBC BANK PLC ("HSBC"); and
- (2) BANK AL BILAD ("BAB"),

at the request of Ambro Limited ("**Ambro**") in respect of Ambro's obligations to effect delivery of commodities to BAB and on BAB's behalf to HSBC under certain sale agreements as referred to below.

1. Reference is made to:
  - (a) a master sale agreement dated [ ] made between Ambro and BAB under which Ambro and BAB may from time to time enter into transactions pursuant to which Ambro will sell to BAB certain metals (the "**Ambro/BAB Master Sale Agreement**");
  - (b) a master murabaha agreement dated [ ] made between BAB and HSBC under which BAB and HSBC may from time to time enter into transactions pursuant to which BAB will sell to HSBC certain metals (the "**BAB/HSBC Master Sale Agreement**").
2. From time to time Ambro and BAB may enter into sale transactions under the Ambro/BAB Master Sale Agreement and BAB and HSBC may enter into sale transactions under the BAB/HSBC Master Sale Agreement under which Ambro will sell to BAB certain metals and BAB will on-sell those metals to HSBC ("**Sale Transactions**" and "**On-Sale Transactions**" respectively), with delivery of such metals to be effected, in the case of a Sale Transaction, by Ambro crediting such metals to a commodity account of BAB in its books and, in the case of an On-Sale Transaction, by Ambro debiting the metals from such commodity account of BAB and crediting them to a commodity account of HSBC in its books with the consideration under the Sale Transaction to be paid by way of BAB transferring the purchase price to Ambro's settlement account with HSBC, account number [ ], sort code [ ] (the "**Ambro Account**").
3. HSBC irrevocably undertakes to pay to BAB any amount or amounts, despite any objection on the part of Ambro, upon receipt of BAB's first written demand made in accordance with the claim procedure detailed below.
4. Any demand must be substantially in the form of the Schedule to this Performance Guarantee (with appropriate additions and deletions).

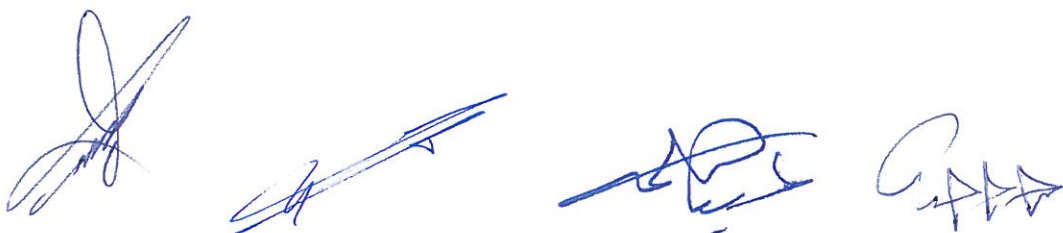
5. Any demand under this Performance Guarantee must be submitted to HSBC by letter addressed to HSBC Bank plc, [ ], Level [ ], 8 Canada Square, London E14 5HQ, marked for the attention of [ ] and signed on behalf of BAB by [one of the authorised signatories whose names and specimen signatures appear in the latest signature book provided by BAB to HSBC].
6. A demand submitted by facsimile transmission will not be accepted.
7. Any demand made in accordance with the above procedure will be accepted as conclusive evidence that the amount claimed by BAB under this Performance Guarantee is due provided that:
  - (a) HSBC's liability in respect of any demand shall not exceed the amount transferred by BAB to the Ambro Account by way of consideration for the metals to which the demand relates;
  - (b) this Performance Guarantee will come into force on [commencement date];
  - (c) this Performance Guarantee will expire on [expiry date] and any demand hereunder must be received by HSBC in accordance with the above claim procedure on or before such date, after which this Performance Guarantee will become of no effect whatsoever whether returned to HSBC or not.
8. HSBC will notify BAB if it becomes aware that Ambro has failed to credit any metals subject to an On-Sale Transaction to HSBC's commodity account in the books of Ambro on the delivery date for such On-Sale Transaction.
9. If BAB makes a demand under this Performance Guarantee, the On-Sale Transaction in respect of the metals to which the demand relates shall be cancelled and BAB and HSBC shall be released from all obligations and liabilities to one another thereunder provided that if HSBC has paid any amounts to BAB under or in connection with such On-Sale Transaction such amounts shall be immediately reimbursed by BAB to HSBC on demand.
10. HSBC may set-off any reimbursement liability owed by BAB to HSBC pursuant to paragraph 9 against any liability owed by HSBC to BAB under this Performance Guarantee.
11. No interest shall be payable by either party on amounts owing to the other party under this Performance Guarantee.
12. HSBC agrees that it will not sell any metals acquired by it pursuant to an On-Sale Transaction to Ambro.

13. This Performance Guarantee is personal to BAB and is not transferable or assignable.
14. This Performance Guarantee shall be governed by and construed in accordance with English law to the extent it is consistent with the principles of Shariah law. If any rule of English law applicable to this Performance Guarantee is contrary or repugnant to the principles of Shariah law, the principles of Shariah law shall prevail.
15. Any dispute arising out of or in connection with this Performance Guarantee shall be referred to and settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of the arbitration shall be London. The language of the arbitration shall be English.
16. Each party has independently satisfied itself through its Shariah Supervisory Board that the provisions of this Performance Guarantee are not inconsistent with or repugnant to the principles of Shariah law.

**The parties have entered into this Performance Guarantee on the date first written above**

For and on behalf of  
**HSBC BANK PLC**

For and on behalf of  
**BANK AL BILAD**



**SCHEDULE  
Form of Demand**

To: HSBC Bank plc  
[ ]

[Date]

Dear Sirs

We refer to the Performance Guarantee dated [ ] made between you and us.

Terms defined in the Performance Guarantee have the same meaning when used in this demand.

We hereby demand payment of [ ] under the Performance Guarantee.

We certify that the amount claimed is due by reason of Ambro [failing to credit metals subject to a Sale Transaction to a commodity account in our name in Ambro's books][failing to credit metals subject to an On-Sale Transaction to a commodity account in your name in Ambro's books].

For the purposes of identification, details of the Sale Transaction and On-Sale Transaction in respect of the metals to which this demand relates are as follows:

**Sale Transaction**

Date: [ ]

Metal: [ ]

Quantity: [ ]

Total Purchase Price: [ ]

Delivery Date: [ ]

**On-Sale Transaction**

Date: [ ]

Metal: [ ]

Quantity: [ ]

Total Purchase Price: [ ]

Delivery Date: [ ]

We confirm that we have transferred the purchase price under the Sale Transaction referred to above to the Ambro Account by way of consideration for the metals subject to to which this demand relates.

Yours faithfully

For and on behalf of

**BANK AL BILAD**

(Authorised Signatory)