

SAMPLE Clauses in the Formal Sale and Purchase Agreement

For Payment Arrangements for Property Transactions – Sale & Purchase Scenario¹

1. The parties agree the following terms and conditions shall supersede the payment clause at Clause [*] herein if the parties agree to adopt PAPT for S&P (as defined below) in this sale and purchase Provided Always the following Clauses [2 to 10] hereof shall be void and cease to have effect if there is a withdrawal of the agreement to adopt PAPT for S&P pursuant to either of the PMI/Buy-side Contract (as defined below) or the Appointee Bank/Sell-side Contract (as defined below) on or before eight (8) Business Days before the completion date or any of the Conditions under Clause 3 has not been satisfied. In case the following terms and conditions becoming void and cease to have effect, the parties shall not use PAPT for S&P as the method of settlement on completion and:
 - (a) the Purchaser shall discharge its obligation to pay the purchase price by way of cashier's order(s) and/or solicitor's cheque(s) in accordance with the payment clause at Clause [*] herein; and
 - (b) the parties acknowledge that they shall not by reason of a change in the method of payment as hereinbefore provided seek to rescind the sale and purchase of the Property.
2. The Purchaser and the Vendor agree that the Purchaser shall discharge its obligation to pay the balance of the purchase price on completion in the following manner:
 - (a) Subject to Clause 3, if the Purchaser obtains a mortgage loan from a Bank ("PMI"), by way of (i) the PMI transferring the net mortgage loan amount ("PMI Funds") to the Vendor's existing mortgagee ("VMI") (or if there is no existing mortgage over the Property, the VAM (as defined below)) via CHATS (or if the PMI and the VMI or the VAM are the same entity, internal fund transfer) in payment or part payment of the balance of the purchase price and (ii) the PMI providing the CHATS Advice or (as the case may be) the Bank Advice in respect of such transfer to the Vendor's solicitors through the Purchaser's solicitors and (iii) with the PMI Funds to be held by the VMI or the VAM upon the terms and conditions of the T&C (as defined below) (such payment arrangement being "PAPT for S&P"); and
 - (b) By way of cashier's order(s) and/or solicitor's cheque(s) in case the PMI Funds fall short of the balance of the purchase price payable on completion.
3. Both the Purchaser and the Vendor agree that the adoption of PAPT for S&P is

¹ Sample terms to be incorporated in all FSPAs adopting PAPT for S&P.

subject to the following conditions (the “**Conditions**”):

- (a) the PMI/Buy-side Contract having been signed and delivered to the PMI and the Appointee Bank/Sell-side Contract having been signed and delivered to the VMI (or if there is no existing mortgage over the Property, the VAM) in respect of this sale and purchase, by which (among others) each of the Purchaser and the Vendor confirms its agreement to adopt the T&C for this sale and purchase; and
 - (b) the following consents having been obtained no later than [●] Business Days prior to the completion date:
 - (i) the Purchaser shall obtain the consent of the PMI to adopt PAPT for S&P in this sale and purchase; and
 - (ii) the Vendor shall obtain the consent of the VMI (or if there is no existing mortgage over the Property, the VAM) to adopt PAPT for S&P in this sale and purchase.
4. If PAPT for S&P is adopted in this sale and purchase, the Vendor through its solicitors shall be entitled, by giving the Purchaser or its solicitors at least [two] Business Days’ prior notice in writing, to require the Purchaser to split payment in respect of the balance of the purchase price (if any) less the PMI Funds and deliver to the Vendor’s solicitors one or more cashier’s order(s) and/or solicitor’s cheque(s) issued in favour of the person(s) or party/parties entitled to such payment(s).
5. [Conveyancing Scenario 1- Contract completion note: when there is an existing Vendor Mortgage to be discharged. Delete as appropriate.]

On completion, the Purchaser shall give directions as to the following:

- (a) The PMI shall transfer the PMI Funds to the VMI via CHATS or (as the case may be) internal fund transfer before 12 noon. Such payment of the PMI Funds by the PMI to the VMI shall be evidenced by the CHATS Advice or (as the case may be) the Bank Advice that is issued to the PMI following such payment;
- (b) The Purchaser’s solicitors shall deliver to the Vendor’s solicitors by 5:00pm² or such other earlier time as agreed between the parties:

² The parties must ensure that the time to be agreed is sufficient for CHATS Advice to reach the VMI / VAM by 5:30 pm. Please also note the usual deadline for completion in conveyancing transactions is 5:00pm. Please consult the solicitors acting for you to determine the appropriate deadline.

- (i) the CHATS Advice or (as the case may be) the Bank Advice;
- (ii) cashier's order(s) or solicitor's cheque(s) in respect of the balance of the purchase price less the PMI Funds (if any); and
- (iii) the amount of Fees and Expenses (if applicable).

OR

5. [Conveyancing Scenario 2: Contract completion note: when there is no existing Vendor Mortgage. Delete as appropriate.]

The Vendor shall designate a HKD account at a Bank in Hong Kong, which serves as the VAM, for receiving the PMI Funds. On completion, the Purchaser shall give directions as to the following:

- (a) The PMI shall transfer the PMI Funds to the VAM via CHATS or (as the case may be) internal fund transfer before 12 noon. Such payment of the PMI Funds by the PMI to the VAM shall be evidenced by the CHATS Advice or (as the case may be) the Bank Advice issued to the PMI following such payment;
 - (b) The Purchaser's solicitors shall deliver to the Vendor's solicitors by 5:00pm³ or such other earlier time as agreed between the parties:
 - (i) the CHATS Advice or (as the case may be) the Bank Advice; and
 - (ii) cashier's order(s) or solicitor's cheque(s) in respect of the balance of the purchase price less the PMI Funds (if any); and
 - (iii) the amount of Fees and Expenses (if applicable).
6. The Vendor acknowledges and agrees that:
- (a) (if there is an existing Vendor Mortgage over the Property) any surplus of the PMI Funds after deduction of the redemption money for discharging the existing mortgage on completion ("**Surplus**") will be released by the VMI to the Vendor by the End of the completion date (but the actual date of the Vendor receiving cleared funds will be subject always to the completion of the Relevant Checks) to a Vendor's bank account in Hong Kong;
 - (b) (if there is no existing Vendor Mortgage over the Property) the PMI Funds will be

³ In contrast to Conveyancing Scenario 1, this will not need to be moved to an earlier time of the completion date as the VAM is not expected to have its own solicitors.

released by the VAM to the Vendor by the End of the completion date (but the actual date of the Vendor receiving cleared funds will be subject always to the completion of the Relevant Checks) to a Vendor's bank account in Hong Kong;

- (c) the Purchaser shall have fulfilled his obligations for payment of such part of the balance of the purchase price, which is the PMI Funds upon delivery of the CHATS Advice or (as the case may be) the Bank Advice to the Vendor's solicitor (but the actual date of the Vendor receiving cleared funds will be subject always to the completion of the Relevant Checks);
 - (d) the Vendor shall be deemed to have acknowledged receipt of the full balance of purchase price on completion, upon receipt by the Vendor's solicitors of (i) the CHATS Advice or (as the case may be) the Bank Advice (in respect of the PMI Funds); and (ii) the Purchaser's cashier's order(s) or solicitor's cheque(s) in favour of such party(ies) and in such amount as directed by the Vendor's solicitors (in respect of the balance of the purchase price less the PMI Funds (if any)) (but the actual date of the Vendor receiving cleared funds will be subject always to the Relevant Checks); and
 - (e) in the event that any Surplus (in the case where there is an existing mortgage) or the PMI Funds (in the case where there is no existing mortgage) is payable to the Vendor's bank account, there shall be no more than one account of the Vendor for receiving such moneys.
7. The CHATS Advice may be corrected to the extent that the redemption reference quoted therein is incorrect. The parties agree that the PMI shall be entitled to issue a CHATS Advice Correction Notice to correct the redemption reference in the CHATS Advice addressed to the VMI or (as the case may be) the VAM with a copy provided to the PMI's solicitors and the VMI's solicitors (or the Vendor's solicitors, whichever applicable), stating the correct information. A CHATS Advice that has been duly corrected with a CHATS Advice Correction Notice in such manner shall be deemed a CHATS Advice for the purpose of this sale and purchase.
8. The Vendor shall give directions to his solicitors, after receiving the CHATS Advice or (as the case may be) the Bank Advice from the Purchaser's solicitors, to promptly provide the same to the VMI or (as the case may be) the VAM, and in any event no later than such time as may be required by the VMI or the VAM. The Purchaser shall not be held liable for any failure or delay in the Vendor receiving the Surplus or (as the case may be) the PMI Funds as a result of the Vendor's solicitors not delivering the CHATS Advice or the Bank Advice as aforesaid or any delay caused by the VMI or the VAM.

9. If the PMI has effected transfer of the PMI Funds to the VMI or (as the case may be) the VAM via CHATS but the PMI does not receive the CHATS Advice after initiating such transfer, the Vendor and the Purchaser acknowledge and agree that:
- (a) the PMI may promptly arrange for the re-issuance of the CHATS Advice and use such re-issued CHATS Advice for the purpose of discharging the Purchaser's obligation to pay the balance of the purchase price on completion in accordance with Clause 2(a); and
 - (b) provided that the PMI has promptly arranged for re-issuance of the CHATS Advice but is unable to receive any re-issued CHATS Advice, it may request the VMI (or if there is no existing mortgage over the Property, the VAM) to confirm whether it has received the PMI Funds from the PMI. If the VMI or the VAM is able to identify the receipt of the PMI Funds, it may issue a written confirmation to the PMI confirming receipt of the PMI Funds and such confirmation shall replace the CHATS Advice for the purpose of discharging the Purchaser's obligation to pay the balance of the purchase price on completion in accordance with Clause 2(a). All references to the CHATS Advice in the foregoing paragraphs shall then be replaced by such written confirmation by the VMI or (as the case may be) the VAM issued to the PMI in such circumstances.
10. If the completion date falls on a day on which a CHATS Failure takes place at any time before 12:00 noon:
- (a) such completion date shall automatically be postponed to the next business day on which no CHATS Failure has occurred at any time before 12:00 noon ("**Rescheduled Completion Date**"); and
 - (b) on the Rescheduled Completion Date, the Purchaser and the Vendor shall use PAPT for S&P as the method of settlement in accordance with Clause [5].
11. Each of the Vendor and the Purchaser acknowledges and agrees that where there is any inconsistency between the additional terms and conditions set out in Clauses [1] to [11] ("**PAPT Terms**") and any other terms in the agreement for this sale and purchase, the PAPT Terms shall prevail.

[Additional Defined Terms]

"**Appointee Bank/Sell-side Contract**" means an agreement in respect of this sale and

purchase transaction adopting PAPT for S&P signed by the Vendor [(and the VMI Borrower, if different from the Vendor)]⁴ and addressed to the VMI or (as the case may be) the VAM, which incorporates the terms of the T&C.

“**Bank(s)**” means a company which holds a valid banking licence, as defined in the Banking Ordinance (Cap. 155).

“**Bank Advice**” means a document issued by a Bank in respect of the completion of an internal fund transfer.

“**Business Day**” means Monday to Friday excluding Saturdays, Sundays, general holidays defined in the General Holidays Ordinance, Cap. 149 of the Laws of Hong Kong.

“**Conditions**” has the meaning given to it in Clause [3].

“**CHATS**” means Hong Kong Dollar Clearing House Automated Transfer System.

“**CHATS Advice**” means a document in a format that is printable by the PMI only, which is issued automatically by Hong Kong Interbank Clearing Limited to PMI on the CHATS interface immediately after a payee receives payment in its settlement account from a payor via CHATS.

“**CHATS Failure**” means a system failure of CHATS which prevents the PMI from making remittance or transfer to the VMI or (as the case may be) the VAM via CHATS.

“**End of the completion date**” means 11:59 pm on the completion date.

“**Fees and Expenses**” means fees and expenses agreed to be settled between the Purchaser and the Vendor, including but not limited to rental deposit, utilities deposit, management fee, or stakeholders' money such as renovation money (if applicable).

“**PAPT for S&P**” has the meaning given to it in Clause [2(a)].

“**PAPT Terms**” has the meaning given to it in Clause [11].

“**PMI**” has the meaning given to it in Clause [2(a)].

“**PMI Borrower**” means the borrower under the bank facilities granted by the PMI which are secured by the Purchaser’s mortgage over the Property.

“**PMI/Buy-side Contract**” means an agreement in respect of this sale and purchase transaction adopting PAPT for S&P signed by the Purchaser (and the PMI Borrower, if

⁴ Delete for Conveyancing Scenario 2

different from the Purchaser) and addressed to the PMI, which incorporates the terms of the T&C.

“**PMI Funds**” has the meaning given to it in Clause [2(a)].

“**Relevant Checks**” means any customary screening in respect of funds received by the VMI or (as the case may be) the VAM in compliance with the internal policy of the relevant Bank and all applicable laws and regulations.

“**Surplus**” has the meaning given to it in Clause [6].

“**T&C**” means “Terms and Conditions in relation to the operation of PAPT” as referred to in each of the PMI/Buy-side Contract and the Appointee Bank/Sell-side Contract.

“**VAM**” means a Bank that provides mortgage services for the purpose of receiving PMI Funds and is a participating institution of CHATS.

“**Vendor Mortgage**” means the existing mortgage over the Property as registered at the Land Registry of Hong Kong.

“**VMI**” has the meaning given to it in Clause [2(a)].

“**VMI Borrower**” means the borrower under the bank facilities granted by the VMI which are secured by the existing mortgage over the Property.