

2008

## TERMS AND CONDITIONS OF THE NOTES

*The following are the terms and conditions (the "Terms and Conditions") of the Notes to be issued by an Issuer which will be incorporated by reference into each Global Note and which will be endorsed upon each Definitive Note (if any). The applicable Final Terms in relation to any Notes may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such Notes.*

This Note is one of a series of Notes issued with the benefit of the Agency Agreement (defined below). References in these Terms and Conditions to the "Issuer" shall be references to the party specified as such in the applicable Final Terms (as defined below). References herein to the "Notes" shall be references to the Notes of this Series (as defined below) and shall mean (i) in relation to any Notes represented by a temporary global note in bearer form (a "Temporary Global Note"), a permanent global note in bearer form (a "Permanent Global Note") or a permanent global note (a "Swiss Global Note") representing a Tranche of Swiss Notes (as defined below) (and "Global Note" means a Temporary Global Note, a Permanent Global Note or a Swiss Global Note), units of the lowest Specified Denomination in the Specified Currency of issue, (ii) individual definitive Notes in bearer form ("Definitive Notes") issued in exchange (or part exchange) for a Global Note and (iii) any Global Note. The Notes, the Receipts and the Coupons (each as defined below) have the benefit of an amended and restated Agency Agreement dated 26 August, 2008, as further amended and/or supplemented and/or restated from time to time, (the "Agency Agreement") made between, *inter alia*, the Issuer, Nestlé S.A. as guarantor (the "Guarantor") in relation to Notes issued by Nestlé Finance International Ltd. and guaranteed Notes issued by Nestlé Holdings, Inc., Citibank, N.A. as issuing and principal paying agent and, if so specified in the applicable Final Terms, as calculation agent (the "Agent", which expression shall include any successor agent or any other calculation agent specified in the applicable Final Terms) in respect of all Notes other than Notes which will be listed on the SWX Swiss Exchange only and/or denominated in Swiss Francs (together the "Swiss Notes") and the other paying agents named therein (together with the Agent and the "Paying Agents", which expression shall include any additional or successor paying agents). If this Note is a Swiss Note, the Swiss issuing and paying agent (the "Swiss Agent") named in the applicable Final Terms and the other Swiss paying agents named therein will act as Agent and Paying Agents, respectively, in respect of this Note and the expressions "Agent and "Paying Agents" shall be construed accordingly.

Interest bearing Definitive Notes (unless otherwise indicated in the applicable Final Terms) have interest coupons ("Coupons") and, if indicated in the applicable Final Terms, 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. Definitive Notes repayable in instalments have receipts ("Receipts") for the payment of the instalments of principal (other than the final instalment) attached on issue.

Any reference herein to "Noteholders" shall mean the holders of the Notes, and shall, in relation to any Notes represented by a Global Note held on behalf of Euroclear Bank S.A./N.V. ("Euroclear") and/or Clearstream Banking, *société anonyme* ("Clearstream, Luxembourg") and/or SIS SegaInterSettle AG, Olten, Switzerland ("SIS"), be construed as provided below. Any reference herein to "Receiptholders" shall mean the holders of the Receipts and any reference herein to "Couponholders" shall mean the holders of the Coupons, and shall, unless the context otherwise requires, include the holders of the Talons (the "Talonholders").

Any reference herein to Euroclear and/or Clearstream, Luxembourg and/or SIS shall, whenever the context so permits, be deemed to include a reference to any additional or alternative clearing system approved by the Issuer, the Guarantor (if applicable) and the Agent and specified in the applicable Final Terms.

Any reference herein to "guaranteed Notes issued by Nestlé Holdings, Inc." and any related expression is a reference to Notes issued by Nestlé Holdings, Inc. which are guaranteed by Nestlé S.A.

The Final Terms applicable to this Note are attached hereto or endorsed hereon and supplements these Terms and Conditions and may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with these Terms and Conditions, replace or modify these Terms and Conditions for the purposes of this Note. References herein to the "applicable Final Terms" are to the Final Terms attached hereto or endorsed hereon.

As used herein, "Series" means each original issue of Notes together with any further issues expressed to form a single series with the original issue and the terms of which (save for the Issue Date, the amount and the date of the first payment of interest thereon and/or the Issue Price (as indicated in the applicable Final Terms)) are identical (including Maturity Date, Interest Basis, Redemption/Payment Basis and Interest Payment Dates (if any) and whether or not the Notes are admitted to trading). As used herein, "Tranche" means all Notes of the same Series with the same Issue Date and Interest Commencement Date (if applicable).

Copies of the Agency Agreement are available at the specified offices of the Agent and each of the other Paying Agents. Copies of the Final Terms are available for viewing on the Nestlé Group investor relations website at [www.ir.nestle.com](http://www.ir.nestle.com). Copies are also expected to be published on the Regulatory News Service of the London Stock

Exchange. The Noteholders, the Receiptholders and the Couponholders are deemed to have notice of, and are entitled to the benefit of, all the provisions of the Agency Agreement and the applicable Final Terms, which are binding on them.

Words and expressions defined in the Agency Agreement or used in the applicable Final Terms shall have the same meanings where used in these Terms and Conditions unless the context otherwise requires or unless otherwise stated.

A Global Note may be exchanged in whole or, in certain circumstances, in part for Definitive Notes upon request by any holder of an interest therein in accordance with these Terms and Conditions, the provisions of the relevant Global Note and as specified in the applicable Final Terms.

## **1. Form, Denomination and Title**

The Notes are in bearer form and, except in the case of Global Notes, serially numbered, in the Specified Currency and the Specified Denomination(s) specified in the applicable Final Terms.

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

Each Note may be an Index Linked Redemption Note, a Dual Currency Note, a Partly Paid Note or an Instalment Note or a combination of any of the foregoing or any other type of Note, depending upon the Redemption/Payment Basis shown in the applicable Final Terms.

Notes, except for Global Notes, 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 Notes, Receipts and Coupons will pass by delivery. Subject as set out below, the Issuer, the Guarantor (if applicable) and any Paying Agent may deem and treat the bearer of any Note, Receipt or Coupon 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 but, in the case of any Global Note, without prejudice to the provisions set out in the next succeeding paragraph.

For so long as any of the Notes are represented by a Global Note held on behalf of Euroclear and/or 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 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 Guarantor (if applicable), and any Paying Agent 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 the Notes, for which purpose the bearer of the relevant Global Note shall be treated by the Issuer, the Guarantor (if applicable) and any Paying Agent as the holder 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). Notes which are represented by a Global Note will be transferable only in accordance with the rules and procedures for the time being of Euroclear, Clearstream, Luxembourg or of SIS, as the case may be

## **2. Status of the Notes and Guarantee**

- (a) The Notes are direct, unconditional, unsubordinated and unsecured obligations of the Issuer and rank *pari passu* and rateably without any preference among themselves and equally with all other unsecured and unsubordinated obligations of the Issuer from time to time outstanding (other than obligations mandatorily preferred by law).
- (b) If the Issuer is Nestlé Finance International Ltd., the payment of the principal and interest in respect of each Note has been unconditionally and irrevocably guaranteed by the Guarantor pursuant to the Guarantee dated the Issue Date (the "Guarantee") which has been deposited for the benefit of the Noteholders, Receiptholders and Couponholders with the Agent. If the Issuer is Nestlé Holdings, Inc., the payment of principal and interest in respect of each Note will, if so stated in the applicable Final Terms but not otherwise, have been unconditionally and irrevocably guaranteed by the Guarantor pursuant to the Guarantee dated the Issue Date (also the "Guarantee") which has been deposited for the benefit of the Noteholders, Receiptholders and Couponholders with the Agent. Each Guarantee will be in the form (subject to completion) scheduled to the Agency Agreement.

## **3. Negative Pledge**

So long as any of the Notes remain outstanding:

- (a) the Issuer will procure that, provided that security upon its assets is neither mandatory pursuant to applicable laws nor required as a prerequisite for governmental approvals, no Relevant Indebtedness (as defined below)

now or hereafter existing of the Issuer and no guarantee or indemnity by the Issuer of any Relevant Indebtedness of any Subsidiary (as defined below) of the Issuer will be secured by any mortgage, charge, lien, pledge or other security interest upon, or with respect to, the whole or any part of the present or future revenues or assets of the Issuer unless in any such case the Issuer shall, simultaneously with, or prior to, the creation of such security interest, take any and all action necessary to procure that all amounts payable under the Notes are secured by such security interest equally and rateably or such other security interest is provided for such amounts as is not materially less beneficial to the interests of the Noteholders or as shall be approved by an Extraordinary Resolution of the Noteholders; and

(b) where the issue of the Notes by the Issuer is guaranteed by the Guarantor, the Guarantor will procure that, provided that security upon its assets is neither mandatory pursuant to applicable laws nor required as a prerequisite for governmental approvals, no Relevant Indebtedness now or hereafter existing of the Guarantor and no guarantee or indemnity by the Guarantor of any Relevant Indebtedness of the Issuer or any Subsidiary of the Issuer will be secured by any mortgage, charge, lien, pledge or other security interest upon, or with respect to, the whole or any part of the present or future revenues or assets of the Guarantor unless in any such case the Guarantor shall, simultaneously with, or prior to, the creation of such security interest, take any and all action necessary to procure that all amounts payable under the Guarantee are secured by such security interest equally and rateably or such other security interest is provided for such amounts as is not materially less beneficial to the interests of the Noteholders or as shall be approved by an Extraordinary Resolution of the Noteholders, provided that in the event of a merger, amalgamation or consolidation of the Guarantor with another company the provisions of this paragraph shall not apply with regard to any security in respect of any Relevant Indebtedness over the assets of that other company which security exists at the time of such merger, amalgamation or consolidation (other than any such security created in contemplation thereof) and any such security thereafter created by the resulting or surviving entity in substitution for the aforesaid security over assets the value of which does not materially exceed the current value of the assets subject to such security immediately prior to such merger, amalgamation or consolidation.

For the purposes of this Condition 3, "Relevant Indebtedness" means any indebtedness now or hereafter existing which is in the form of or represented or evidenced by any bonds, notes or other securities which, in any such case, are or are capable of being listed on any recognised stock exchange and "Subsidiary" means any company of which the Issuer shall own more than 50 per cent. of the outstanding voting stock of such company.

#### **4. Interest**

##### **(a) Interest on Fixed Rate Notes**

Each Fixed Rate Note bears interest from (and including) the Interest Commencement Date specified in the applicable Final Terms (or the Issue Date, if no Interest Commencement Date is separately specified) to (but excluding) the Maturity Date specified in the applicable Final Terms at the rate(s) per annum equal to the Rate of Interest so specified. Interest will be payable in arrear on the Interest Payment Date(s) in each year and on the Maturity Date so specified if that does not fall on an Interest Payment 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 as specified in the applicable Final Terms. Payments of interest on any Interest Payment Date will, if so specified in the applicable Final Terms, amount to the Broken Amount(s) so specified.

As used in these Conditions, "Fixed Interest Period" means the period from (and including) an Interest Payment Date (or the Interest Commencement Date or the Issue Date, as the case may be, to (but excluding) the next (or first) Interest Payment Date or Maturity Date.

Unless specified otherwise in the applicable Final Terms, the "Following Business Day Convention" will apply to the payment of all Fixed Rate Notes, meaning that if the Interest Payment Date or Maturity Date would otherwise fall on a day which is not a Business Day (as defined in Condition 4(b)(i) below), the related payment of principal or interest will be made on the next succeeding Business Day as if made on the date such payment was due. If the "Modified Following Business Day Convention" is specified in the applicable Final Terms for any Fixed Rate Note, it shall mean that if the Interest Payment Date or Maturity Date would otherwise fall on a day which is not a Business Day (as defined in Condition 4(b)(i) below), the related payment of principal or interest will be made on the next succeeding Business Day as if made on the date such payment was due unless it would thereby fall into the next calendar month in which event the full amount of payment shall be made on the immediately preceding Business Day as if made on the day such payment was due. Unless specified otherwise in the applicable Final Terms, the amount of interest due shall not be changed if payment is made on a day other than an Interest Payment Date or the Maturity Date as a result of the application of a Business Day Convention specified above or other Business Day Convention specified in the applicable Final Terms.

Except in the case of Notes in definitive form where a 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:

- (i) 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, if they are Partly Paid Notes, the aggregate amount paid up); or
- (ii) in the case of Fixed Rate Notes in definitive form, the Calculation Amount;

and, in each case, multiplying such sum by the applicable Fixed Day Count Fraction (as specified in the applicable Final Terms) 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 is 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 the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

In these Terms and Conditions, "Fixed Day Count Fraction" means (unless specified otherwise in the applicable Final Terms):

- (i) if "Actual/Actual (ICMA)" is specified in the applicable Final Terms:
  - (A) 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 or Issue Date, as applicable) to (but excluding) the relevant payment date (the "Accrual Period") is equal to or shorter than the Determination Period (as defined below) during which the Accrual Period ends, the number of days in such Accrual Period divided by the product of (1) the number of days in such Determination Period and (2) the number of Determination Dates (as specified in the applicable Final Terms) that would occur in one calendar year assuming interest was to be payable in respect of the whole of that year; or
  - (B) in the case of Notes where the Accrual Period is longer than the Determination Period during which the Accrual Period ends, the sum of:
    - (1) 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 (as specified in the applicable Final Terms) that would occur in one calendar year assuming interest was to be payable in respect of the whole of that year; and
    - (2) 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 (as specified in the applicable Final Terms) that would occur in one calendar year assuming interest was to be payable in respect of the whole of that year; and
- (ii) if "30/360" is specified in the applicable Final Terms, the number of days in the relevant period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date or Issue Date, as applicable) to (but excluding) the next scheduled Interest Payment Date or the Maturity Date (such number of days being calculated on the basis of a year of 360 days with 12 30-day months) divided by 360 and, in the case of an incomplete month, the number of days elapsed; and

"Determination Period" means each period from (and including) a Determination Date (as specified in the applicable Final Terms) 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, means one cent.

**(b) Interest on Floating Rate Notes and Index Linked Interest Notes**

**(i) Interest Payment Dates**

Each Floating Rate Note and Index Linked Interest Note bears interest from (and including) the Interest Commencement Date specified in the applicable Final Terms (or the Issue Date, if no Interest Commencement Date is separately specified) and, unless specified otherwise in the applicable Final Terms, at the rate equal to the Rate of Interest payable in arrear on the Maturity Date and on either:

- (A) the Specified Interest Payment Date(s) (each, together with the Maturity Date, an "Interest Payment Date") in each year specified in the applicable Final Terms; or

- (B) if no Specified Interest Payment Date(s) is/are specified in the applicable Final Terms, each date (each such date, together with the Maturity 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 or Issue Date, as applicable.

Such interest will be payable in respect of each Interest Period (which expression shall, in these Terms and Conditions, mean the period from (and including) an Interest Payment Date (or the Interest Commencement Date or Issue Date, as applicable) 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 (as defined below), then, if the Business Day Convention specified is:

- (1) in the case where a Specified Period is specified in accordance with Condition 4(b)(i)(B) 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 (B) below in this sub-paragraph (1) 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 within the Specified Period after the preceding applicable Interest Payment Date occurred; or
- (2) the Following Business Day Convention, such Interest Payment Date shall be postponed to the next day which is a Business Day; or
- (3) 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
- (4) the Preceding Business Day Convention, such Interest Payment Date shall be brought forward to the immediately preceding Business Day.

In these Terms and Conditions, "Business Day" means (unless otherwise stated in the applicable Final Terms) a day which is both:

- (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 London and any other place as is specified in the applicable Final Terms (each an "Additional Business Centre"); and
- (B) 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 (if other than London and any other Additional Business Centre specified in the applicable Final Terms) 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 or any successor thereto (the "TARGET2 System") is open. Unless otherwise provided in the applicable Final Terms, the principal financial centre of any country for the purpose of these Terms and Conditions shall be as provided in the 2006 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) as supplemented, amended and updated as of the first Issue Date of the Notes of the relevant Series (the "ISDA Definitions") (except if the Specified Currency is Australian dollars or New Zealand dollars the principal financial centre shall be Sydney and Auckland, respectively).

(ii) *Rate of Interest*

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

(iii) *ISDA Determination*

Unless specified otherwise in the applicable Final Terms, 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 sub-paragraph (iii) unless specified otherwise in the applicable Final Terms, “ISDA Rate plus or minus (as indicated in the applicable Final Terms) the Margin (if any)” for an Interest Period means a rate equal to the Floating Rate that would be determined under an interest rate swap transaction under the terms of an agreement (regardless of any event of default or termination event thereunder) incorporating the ISDA Definitions with the holder of the relevant Note under which:

- (A) the manner in which the Rate of Interest is to be determined is the “Floating Rate Option” as specified in the applicable Final Terms;
- (B) the Issuer is the “Floating Rate Payer”;
- (C) the Agent or other person specified in the applicable Final Terms is the “Calculation Agent”;
- (D) the Interest Commencement Date is the “Effective Date”;
- (E) the Aggregate Nominal Amount of Notes is the “Notional Amount”;
- (F) the relevant Interest Period is the “Designated Maturity” as specified in the applicable Final Terms;
- (G) the Margin is the “Spread”;
- (H) the relevant Reset Date is either (i) if the applicable Floating Rate Option is based on the London inter-bank offered rate (“LIBOR”) or on the Euro-zone inter-bank offered rate (“EURIBOR”) for a currency, the first day of that Interest Period or (ii) in any other case, as specified in the applicable Final Terms; and
- (I) all other terms are as specified in the applicable Final Terms.

When this sub-paragraph (iii) applies, unless specified otherwise in the applicable Final Terms with respect to each relevant Interest Payment Date:

- (A) the amount of interest determined for such Interest Payment Date shall be the Interest Amount for the relevant Interest Period for the purposes of these Terms and Conditions as though calculated under sub-paragraph (vi) below; and
- (B) (i) “Floating Rate”, “Floating Rate Option”, “Floating Rate Payer”, “Effective Date”, “Notional Amount”, “Floating Rate Payer Payment Dates”, “Spread”, “Calculation Agent”, “Designated Maturity” and “Reset Date” have the meanings given to those terms in the ISDA Definitions; and  
(ii) “Euro-zone” means the region comprised of the Member States of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended).

(iv) *Screen Rate Determination for Floating Rate Notes*

Unless specified otherwise in the applicable Final Terms, 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 quotation (if there is only one quotation on the Relevant Screen Page); or
- (B) the arithmetic mean (rounded if necessary to the fourth decimal place, with 0.00005 being rounded upwards) of the offered quotations,

(expressed as a percentage rate per annum), for the Reference Rate (as specified in the applicable Final Terms) for deposits in the Specified Currency for that Interest Period which appears or appear, as the case may be, on the Relevant Screen Page (as specified in the applicable Final Terms) 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 (as defined below) in question plus or minus (as indicated in the applicable Final Terms) the Margin (if any), all as determined by the Agent (or such other Calculation Agent specified in the applicable Final Terms). Unless specified otherwise in the applicable Final Terms, if five or more such offered quotations are available on the Relevant Screen Page, the highest (or, if there is more than one such highest rate, one only of such rates) and the lowest (or, if there is more than one such lowest rate, one only of such rates) shall be disregarded by the Agent (or such other Calculation Agent specified in the applicable Final Terms) for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

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 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.

If the Reference Rate from time to time in respect of Floating Rate Notes or Indexed Linked Interest Notes is specified in the applicable Final Terms as being other than LIBOR or EURIBOR, the Rate of Interest in respect of such Notes will be determined as provided in the applicable Final Terms.

(v) *Minimum 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 any such Interest Period determined in accordance with the above provisions 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 any such Interest Period determined in accordance with the above provisions is greater than such Maximum Rate of Interest, the Rate of Interest for such Interest Period shall be such Maximum Rate of Interest.

(vi) *Determination of Rate of Interest and Calculation of Interest Amounts*

The Agent (or if the Agent is not the Calculation Agent, the Calculation Agent specified in the applicable Final Terms) will calculate the amount of interest (the "Interest Amount") payable on the Floating Rate Notes or Index Linked Interest Notes for the relevant Interest Period by applying the Rate of Interest to:

- (A) in the case of Floating Rate Notes or Index Linked Interest Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Notes represented by such Global Note (or, if they are Partly Paid Notes, the aggregate amount paid up); or
- (B) in the case of Floating Rate Notes or Index Linked Interest Notes in definitive form, the Calculation Amount;

and, in each case multiplying such sum by the applicable Day Count Fraction (as specified in the applicable Final Terms) 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 or as specified in the applicable Final Terms. Without prejudice to sub-paragraph (viii) below, the determination of the Rate of Interest and calculation of each Interest Amount by the Agent (or the Calculation Agent specified in the applicable Final Terms if the Agent is not the Calculation Agent) shall (in the absence of negligence, wilful default, bad faith or manifest error) be binding on all parties. Where the Specified Denomination of a Floating Rate Note or an Index Linked Interest Note in definitive form is 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 the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

"Day Count Fraction" means, unless specified otherwise in the applicable Final Terms, in respect of the calculation of an amount of interest for any Interest Period:

- (A) 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 (A) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366 and (B) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365);
- (B) if "Actual/365 (Fixed)" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365;
- (C) if "Actual/360" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 360;
- (D) 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;

- (E) 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;

- (F) 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, in which case D2 will be 30; and

- (G) if "Actual/365 (Sterling)" is specified in the applicable Final Terms, the 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.

(vii) *Notification of Rate of Interest and Interest Amount*

The Agent will cause the Rate of Interest and each Interest Amount for each Interest Period and the relevant Interest Payment Date to be notified to the Issuer, the Guarantor (if applicable), and any stock exchange or other relevant authority on which the relevant Floating Rate Notes or Index Linked Interest Notes are for the time being admitted to trading and listed and will cause notice thereof to be published or given in accordance with Condition 14 as soon as possible after their determination but in no event later than the earlier of the fourth London Business Day thereafter or the first Business Day of each Interest Period. Each Interest Amount and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without



publication as aforesaid or prior notice in the event of an extension or shortening of the Interest Period in accordance with the provisions hereof. Any such amendment or alternative arrangements will be promptly notified to each stock exchange or other relevant authority on which the relevant Floating Rate Notes or Index Linked Interest Notes are for the time being admitted to trading or listed and to the Noteholders in accordance with Condition 15. 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 business in London.

(viii) *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 paragraph (b), whether by the Agent or other Calculation Agent, shall (in the absence of negligence, wilful default, bad faith or manifest error) be binding on the Issuer, the Guarantor (if applicable), the Agent, the other Paying Agents and all Noteholders, Receiptholders and Couponholders and (in the absence as aforesaid) no liability to the Issuer, the Guarantor (if applicable), the Noteholders, the Receiptholders or the Couponholders shall attach to the Agent or Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions.

(c) *Index Linked Interest Notes, Index Linked Redemption Notes and Dual Currency Notes*

In the case of Index Linked Interest Notes, Index Linked Redemption Notes or Dual Currency Notes, if the rate or amount of interest falls to be determined by reference to an index and/or a formula or, as the case may be, an exchange rate, the rate or amount of interest payable shall be determined in the manner specified in the applicable Final Terms.

(d) *Partly Paid Notes*

In the case of Partly Paid Notes (other than Partly Paid Notes which are Zero Coupon Notes), interest will accrue as aforesaid on the paid-up nominal amount of such Notes and otherwise as specified in the applicable Final Terms.

(e) *Accrual of Interest*

Each Note (or in the case of the redemption of part only of a Note, that part only of such Note to be redeemed) 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 at the rate of interest then applicable or at such other rate as may be specified in the applicable Final Terms until the earlier of (i) the day on which, upon due presentation or surrender of such Note (if required), the relevant payment is made; and (ii) the seventh day after the date on which the Agent having received the funds required to make such payment, notice is given to the Noteholders in accordance with Condition 14 of that circumstance (except to the extent that there is failure in the subsequent payment thereof to the relevant Noteholders).

## 5. **Payments**

(a) *Method of Payment*

Subject as provided below:

- (i) payments in a Specified Currency other than euro will be made by 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, or by a cheque in such Specified Currency drawn on, 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 or Auckland, respectively) unless specified otherwise in the applicable Final Terms; provided that, if the Specified Currency is Australian dollars, payments will be made outside the Commonwealth of Australia by Australian dollar cheque drawn on, or by transfer to an Australian dollar account maintained by the payee with, a bank outside Australia; and
- (ii) payments in euro will be made by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee or, at the option of the payee, by a euro cheque; and
- (iii) payment in U.S. dollars shall be made to a U.S. dollar account outside the United States specified by the payee.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 7.

**(b) *Presentation of Notes, Receipts and Coupons***

Payments of principal in respect of Definitive Notes will (subject as provided below) be made in the Specified Currency in the manner provided in paragraph (a) above only against surrender of such Definitive Notes, and payments of interest in respect of Definitive Notes will (subject as provided below) be made as aforesaid only against surrender of Coupons, in each case at the specified office of any Paying Agent outside the United States. Payments under paragraph (a) above made, at the option of the bearer of such Note or Coupon, by cheque shall be mailed or delivered to an address outside the United States furnished by such bearer. Subject to any applicable laws and regulations, such payments made by transfer will be made in immediately available funds to an account maintained by the payee with a bank located outside the United States. No payment in respect of any Definitive Note or Coupon will be made upon presentation of such Definitive Note or Coupon at any office or agency of the Issuer, the Guarantor (if applicable) or any Paying Agent in the United States, nor will any such payment be made by transfer to an account, or by mail to an address, in the United States.

Payments of instalments of principal (if any), other than the final instalment, will (subject as provided below) be made against presentation and surrender of the relevant Receipt. Each Receipt must be presented for payment of the relevant instalment together with the Definitive Note to which it appertains. Receipts presented without the Definitive Note to which they appertain do not constitute valid obligations of the Issuer. Upon the date on which any Definitive Note becomes due and repayable, unmatured Receipts (if any) relating thereto (whether or not attached) shall become void and no payment shall be made in respect thereof.

Fixed Rate Notes in definitive form (other than Dual Currency Notes and Index Linked Notes) 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. Unless otherwise specified in the applicable Final Terms, each amount of principal so deducted will be paid in the manner mentioned above against surrender of the relevant missing Coupon at any time before the expiry of ten years after the Relevant Date (as defined in Condition 7) in respect of such principal (whether or not such Coupon would otherwise have become void under Condition 8) or, if later, five years from the date on which such Coupon would otherwise have become due. Upon any Fixed Rate Note in definitive 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, Dual Currency Note or Index Linked Note in definitive 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.

If the due date for redemption of any Definitive 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 or Issue Date (as applicable) shall be payable only against surrender of the relevant Definitive Note.

Payments of principal and interest (if any) in respect of Notes represented by any Global Note will (subject as provided below) be made in the manner specified above in relation to Definitive 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 to or to the order of the Agent. A record of each payment made against presentation or surrender of such Global Note, distinguishing between any payment of principal and any payment of interest, will be made on such Global Note by the Agent and such record shall be prima facie evidence that the payment in question has been made.

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 or, as the case may be, the Guarantor (if applicable) 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 or, as the case may be, the Guarantor (if applicable) to, or to the order of, the holder of such Global Note. No person other than the holder of such Global Note shall have any claim against the Issuer or, as the case may be, the Guarantor (if applicable) in respect of any payments due on that Global Note.

Payments in respect of Swiss Notes will be made irrespective of any present or future transfer restrictions and without regard to any bilateral or multilateral payment or clearing agreement which may be applicable at the time of such payments. The receipt by the Swiss Agent of the due and punctual payment of funds in Swiss Francs shall release the Issuer from its obligations under such Swiss Notes (and any Receipts and Coupons appertaining to them) for the payment of principal and interest to the extent of such payment, except to the extent that there is a default in the subsequent payment thereof to the holders of the Notes (and any Coupons and Receipts appertaining to them). Except to the extent required by law, payment of principal and/or interest under such Swiss Notes (and any Receipts and Coupons

appertaining to them) shall be payable in Swiss Francs without collection costs in Switzerland at the specified offices located in Switzerland of the Swiss Paying Agents upon their surrender without any restrictions and whatever the circumstances may be, irrespective of nationality, domicile or residence of the holders of such Swiss Notes (and any Coupons and Receipts appertaining to them) and without requiring any certification, affidavit or the fulfilment of any other formality.

Notwithstanding the foregoing, U.S. dollar payments of interest in respect of the Notes denominated in U.S. dollars will be made at the specified office of a Paying Agent in the United States (which expression, as used herein, means the United States of America (including the States and the District of Columbia, its territories, its possessions and other areas subject to its jurisdiction)) if:

- (i) the Issuer and (if applicable) the Guarantor have 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 interest on the Notes in the manner provided above when due;
- (ii) payment of the full amount of such 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 interest in U.S. dollars; and
- (iii) such payment is then permitted under United States law without involving, in the opinion of the Issuer and (if applicable) the Guarantor, adverse tax consequences to the Issuer or the Guarantor (if applicable).

Payments of principal and interest on Notes issued by Nestlé Holdings, Inc. having a maturity of 183 days or less may not be made by a Paying Agent that is a United States person as defined under section 7701(a)(3) of the Code (including a foreign branch or office of such person).

**(c) *Payment Day***

Unless specified otherwise in the applicable Final Terms, if the due date for payment of any amount in respect of any Note, Receipt 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, unless otherwise specified in the applicable Final Terms, "Payment Day" means any day which (subject to Condition 8) is both:

- (i) a day on which commercial banks and foreign exchange markets settle payments are open for general business (including dealing in foreign exchange and foreign currency deposits) in:
  - (A) the relevant place of presentation;
  - (B) London; and
  - (C) any Additional Financial 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 (if other than the place of presentation, London and any Additional Financial Centre and which, if the Specified Currency is Australian dollars, shall be Sydney) or (2) in relation to any sum payable in euro, a day on which the TARGET2 System is open.

Notwithstanding anything herein to the contrary, in the case of Notes issued by Nestlé Holdings, Inc., if for any reason any Note with a stated Maturity Date of six months or less from the Issue Date would mature on a day that is not a Payment Day and would thereby be repayable on a date which is six months or more from the Issue Date, it shall be repaid on the last Payment Day that is not later than six months after the Issue Date.

**(d) *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:

- (i) any additional amounts which may be payable under Condition 7;
- (ii) the Final Redemption Amount of the Notes;
- (iii) the Early Redemption Amount of the Notes;
- (iv) the Optional Redemption Amount(s) (if any) of the Notes;
- (v) in relation to Notes redeemable in instalments, the Instalment Amounts; and

- (vi) any premium and any other amounts which may be payable by the Issuer or (where applicable) the Guarantor 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 under Condition 7.

## **6. Redemption and Purchase**

### **(a) 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, or determined in the manner specified in, the applicable Final Terms in the relevant Specified Currency on the Maturity Date specified in the applicable Final Terms.

### **(b) Redemption for Tax Reasons**

- (i) The Notes may be redeemed at the option of the Issuer in whole, but not in part, at any time (in the case of Notes other than Floating Rate Notes or Index Linked Interest Notes) or on any Interest Payment Date (in the case of Floating Rate Notes or Index Linked Interest Notes), on giving not less than 30 nor more than 60 days' notice to the Agent and, in accordance with Condition 14, the Noteholders (which notice shall be irrevocable), if:

- (A) on the occasion of the next payment due under the Notes or (if applicable) the Guarantee, the Issuer or (if applicable) the Guarantor, as the case may be, will be or is expected to become obliged to pay additional amounts as provided or referred to in Condition 7 as a result of any change in, or amendment to, the laws or regulations of the jurisdiction in which the Issuer is incorporated or, in the case of payment by the Guarantor (if applicable), Switzerland or, in either case, any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations, which change or amendment is expected to become effective on or after the Issue Date of the first Tranche of the Notes; and

- (B) such obligation cannot be avoided by the Issuer or (where applicable) the Guarantor 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 or (where applicable) the Guarantor would be obliged to pay such additional amounts were a payment in respect of the Notes then due. Prior to the publication of any notice of redemption pursuant to this Condition 6(b), the Issuer shall deliver to the Agent a certificate signed by an officer of the Issuer stating that the obligation referred to in (A) above cannot be avoided by the Issuer or (if applicable) the Guarantor taking reasonable measures available to it and the Agent shall be entitled to accept such certificate as sufficient evidence of the satisfaction of the conditions precedent set out in (B) above in which event it shall be conclusive and binding on the Noteholders, the Receiptholders and the Couponholders.

- (ii) If the Issuer or the Guarantor (if applicable) would, on the next payment in respect of the Notes, be prevented by the law of the jurisdiction in which the Issuer is incorporated or, in the case of payment by the Guarantor (if applicable), Switzerland, from making payment of the full amount then due and payable, notwithstanding the undertaking to pay additional amounts contained in Condition 7, then the Issuer shall forthwith give notice of such fact to the Agent, and the Issuer shall redeem all, but not some only, of the Notes then outstanding upon giving prior notice to the holders of Notes in accordance with Condition 14, provided that the due date for redemption of which notice hereunder shall be given shall be the latest practicable date at which the Issuer or the Guarantor (if applicable), as the case may be, could make payment without withholding or, if that date is past, as soon as practicable thereafter.

Each Note redeemed pursuant to this Condition 6(b) will be redeemed at its Early Redemption Amount referred to in paragraph (h) below together (if appropriate) with interest accrued to (but excluding) the date of redemption.

### **(c) Final Terms**

The Final Terms applicable to the Notes indicates either:

- (i) that the Notes cannot be redeemed prior to their Maturity Date (except as otherwise provided in paragraph (b) above, paragraph (d) below and in Condition 9); or

- (ii) that such Notes will be redeemable at the option of the Issuer and/or the holders of the Notes prior to such Maturity Date in accordance with the provisions of paragraphs (e) and/or (f) below on the date or dates and at the amount or amounts indicated in the applicable Final Terms.

**(d) *Special Tax Redemption where the Issuer is Nestlé Holdings, Inc.***

If the Issuer shall determine that any payment made outside the United States by the Issuer or, if this Note is guaranteed, the Guarantor (if the Guarantor is obliged to make payment under the Guarantee) or any of its paying agents in respect of any Note or Coupon would, under any present or future laws or regulations of the United States, be subject to any certification, documentation, information or other reporting requirement of any kind the effect of which requirement is the disclosure to the Issuer, any paying agent or any governmental authority of the nationality, residence or identity of a beneficial owner of such Note or Coupon who is a Non-U.S. Holder (other than a requirement (a) that would not be applicable to a payment by the Issuer or any one of its paying agents (i) directly to the beneficial owner or (ii) to a custodian, nominee or other agent of the beneficial owner, or (b) that can be satisfied by such custodian, nominee or other agent certifying to the effect that the beneficial owner is a Non-U.S. Holder, provided that, in any case referred to in clauses (a)(ii) or (b), payment by the custodian, nominee or agent to the beneficial owner is not otherwise subject to any such requirement, or (c) that would not be applicable to a payment by at least one paying agent of the Issuer), the Issuer shall at its option either (x) redeem the Notes as a whole, each at a price equal to its Early Redemption Amount, together (if appropriate) with accrued interest to the date fixed for redemption or (y) if the conditions of the next succeeding paragraph are satisfied, pay the additional amounts specified in such paragraph. The Issuer shall make such determination as soon as practicable and publish prompt notice thereof (the "Determination Notice") stating the effective date of such certification, documentation, information or other reporting requirement, whether the Issuer will redeem the Notes or pay the additional amounts specified in the next succeeding paragraph, and (if applicable) the last date by which the redemption of the Notes must take place, as provided in the next succeeding sentence. If the Notes are to be redeemed pursuant to this paragraph, such redemption shall take place on such date, not later than one year after the publication of the Determination Notice, as the Issuer shall elect by notice to the Agent at least 45 days before the date fixed for redemption. Notice of such redemption of the Notes will be given to the holders of the Notes not more than 60 nor less than 30 days prior to the date fixed for redemption in accordance with Condition 14. Notwithstanding the foregoing, the Issuer shall not so redeem the Notes if the Issuer shall subsequently determine, not less than 30 days prior to the date fixed for redemption, that subsequent payments on the Notes and Coupons would not be subject to any such certification, documentation, information or other reporting requirement, in which case the Issuer shall give prompt notice of such subsequent determination in accordance with Condition 14 and any earlier redemption notice shall be revoked and of no further effect.

Notwithstanding the foregoing, if and so long as the certification, documentation, information or other reporting requirement referred to in the preceding paragraph would be fully satisfied by payment of a backup withholding tax or similar charge, the Issuer or the Guarantor (if applicable) may elect to pay as additional interest such additional amounts as may be necessary so that every net payment made outside the United States following the effective date of such requirement by the Issuer or the Guarantor (if applicable) or any of its paying agents in respect of any Note or any Coupon of which the beneficial owner is a Non-U.S. Holder (but without any requirement that the nationality, residence or identity, other than status as a Non-U.S. Holder, of such beneficial owner be disclosed to the Issuer, any paying agent or any governmental authority), after deduction or withholding for or on account of such backup withholding tax or similar charge (other than a backup withholding tax or similar charge that (i) would not be applicable in the circumstances referred to in the parenthetical clause of the first sentence of the preceding paragraph, or (ii) is imposed as a result of the presentation of such Note or Coupon for payment more than 15 days after the date on which such payment became due and payable or on which payment thereof was duly provided for, whichever occurred later), will not be less than the amount provided for in such Note or Coupon to be then due and payable. If the Issuer or the Guarantor (if applicable) elects to pay additional amounts pursuant to this paragraph, the Issuer shall have the right to redeem the Notes at any time as a whole, subject to the provisions of the last two sentences of the immediately preceding paragraph. If the Issuer or the Guarantor (if applicable) elects to pay additional amounts pursuant to this paragraph and the condition specified in the first sentence of this paragraph should no longer be satisfied, then the Issuer shall redeem the Notes pursuant to the provisions of the immediately preceding paragraph.

**(e) *Redemption at the Option of the Issuer (Issuer Call)***

If Issuer Call is specified in the applicable Final Terms, the Issuer may, having (unless otherwise specified in the applicable Final Terms) given not less than 30 nor more than 60 days' notice to the Agent and, in accordance with Condition 14, the Noteholders (which notice shall be irrevocable), redeem all or some only of the Notes then outstanding on the Optional Redemption Date(s) and at the Optional Redemption Amount(s) specified in, or determined in the manner specified in, the applicable Final Terms together, if appropriate, with interest accrued to (but excluding) the Optional Redemption Date(s). Any such redemption must be of a nominal amount not less than the Minimum Redemption Amount or not greater than the Maximum Redemption Amount, both as indicated in the applicable Final Terms. In the case of a partial redemption of Notes, the Notes to be redeemed ("Redeemed Notes") will be selected individually by lot, in the case of Redeemed Notes represented by definitive Notes, and 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 a Global Note, not more than 60 days prior to the date fixed for redemption (such date of selection being hereinafter called the "Selection Date"). In the case of Redeemed Notes represented by Definitive Notes, a list of such Redeemed Notes will be published in accordance with Condition 14 not less than 30 days prior to the date fixed for redemption. No exchange of the relevant Global Note will be permitted during the period from and including the Selection Date to and including the date fixed for redemption pursuant to this sub-paragraph (e) and notice to that effect shall be given by the Issuer to the Noteholders in accordance with Condition 14 at least 10 days prior to the Selection Date.

***(f) Redemption at the Option of the Noteholders (Investor Put)***

If Investor Put is specified in the applicable Final Terms, upon the holder of any Note giving to the Issuer in accordance with Condition 14 not less than 30 nor more than 60 days' notice or such other period of notice as is specified in the applicable Final Terms (which notice shall be irrevocable) the Issuer will, upon the expiry of such notice, redeem, subject to, and in accordance with, the terms specified in the applicable Final Terms, in whole (but not in part), such Note on the Optional Redemption Date and at the Optional Redemption Amount specified in, or determined in the manner specified in, the applicable Final Terms together, if appropriate, with interest accrued to (but excluding) the Optional Redemption Date. It may be that before an Investor Put can be exercised, certain conditions and/or circumstances will need to be satisfied. Where relevant, the provisions will be set out in the applicable Final Terms.

To exercise the right to require redemption of the Note the holder of the Note must, if the Note is in definitive form and held outside Euroclear and Clearstream, Luxembourg, deliver, at the specified office of any Paying Agent at any time during normal business hours of such Paying Agent falling within the notice period, a duly completed and signed notice of exercise in the form (for the time being current) obtainable from any specified office of any Paying Agent (a "Put Notice") and in which the holder must specify a bank account (or, if payment is required to be made by cheque, an address) to which payment is to be made under this Condition accompanied by the Note or evidence satisfactory to the Paying Agent concerned that such Note will, following delivery of the Put Notice, be held to its order or under its control. If the 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 the Note the holder of the Note must, within the notice period, give notice to the Agent 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 or, as the case may be, the common service provider for them to the Agent by electronic means) in a form acceptable to Euroclear and Clearstream, Luxembourg from time to time and, if the Note is represented by a Global Note, at the same time present or procure the presentation of the relevant Global Note to the Agent for notation accordingly.

***(g) Redemption on change of ownership of the Issuer***

If Nestle S.A. shall cease to own, directly or indirectly, at least 51 per cent. of the outstanding voting stock or share capital, as the case may be, issued by the Issuer, the Issuer shall give notice to such effect by publication in accordance with Condition 14 within 10 days of the occurrence of such circumstance. Such notice shall state that any Noteholder may cause his Note to be redeemed in whole by duly completing the Redemption Notice on such Note and delivering such Note (together with all unmatured Coupons appertaining thereto or indemnity satisfactory to the Issuer therefor) to the principal office of the Agent or the Paying Agent during the next 30 days commencing from the date of such publication. Each such Note will be redeemed on the fifth Business Day after the end of such 30-day period at its Early Redemption Amount, together (if applicable) with accrued interest to the date fixed for redemption.

The delivery of a Note with a duly completed Redemption Notice thereon shall constitute an irrevocable election on the part of the holder thereof to cause such Note to be redeemed on the date fixed for redemption.

***(h) Early Redemption Amounts***

For the purpose of paragraphs (b), (d) and (g) above and Condition 9, each Note will be redeemed at its Early Redemption Amount calculated as follows:

- (i) in the case of Notes with a Final Redemption Amount equal to the Issue Price, at the Final Redemption Amount thereof; or
- (ii) in the case of Notes (other than Zero Coupon Notes) with a Final Redemption Amount which is or may be less or greater than the Issue Price or which is payable in a Specified Currency other than that in which the Notes are denominated, at the amount specified in, or determined in the manner specified in, the applicable Final Terms or, if no such amount or manner is so specified in the Final Terms, at their nominal amount; or

- (iii) in the case of Zero Coupon Notes, 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 a fraction the numerator of which is 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 of which is 360,

or on such other calculation basis as may be specified in the applicable Final Terms.

**(i) Instalments**

If the Notes are repayable in instalments, they will be redeemed in the Instalment Amounts and on the Instalment Dates specified in the applicable Final Terms. In the case of early redemption, the Early Redemption Amount will be determined pursuant to paragraph (h) above.

**(j) Partly Paid Notes**

If the Notes are Partly Paid Notes, they will be redeemed, whether at maturity, early redemption or otherwise in accordance with the provisions of this Condition 6 and the applicable Final Terms.

**(k) Purchases**

The Issuer or any of its subsidiaries (other than subsidiaries organised in or under the laws of the United States) may at any time purchase Notes (provided that, in the case of Definitive Notes, all unmatured Receipts and Coupons appertaining thereto are purchased therewith) at any price in the open market or otherwise. Such Notes may be held, resold or, at the option of the Issuer, surrendered to any Paying Agent for cancellation.

**(l) Cancellation**

All Notes which are redeemed will forthwith be cancelled (together with all unmatured Receipts and Coupons attached thereto or surrendered therewith at the time of redemption). All Notes so cancelled and the Notes purchased and cancelled pursuant to paragraph (k) above (together with all unmatured Receipts and Coupons cancelled therewith) shall be forwarded to the Agent and cannot be reissued or resold. If any Note is purchased and cancelled without all unmatured Coupons appertaining thereto, the Issuer shall make payment in respect of any such missing Coupon in accordance with Condition 5 as if the relevant Note had remained outstanding for the period to which such Coupon relates.

**(m) Late Payment on Zero Coupon Notes**

If the amount payable in respect of any Zero Coupon Note upon redemption of such Zero Coupon Note pursuant to paragraph (a), (b), (d), (e), (f) or (g) above or upon its becoming due and repayable as provided in Condition 9 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 paragraph (h)(iii) above as though the references therein to the date fixed for the redemption or the date upon which the Zero Coupon Note becomes due and repayable were replaced by references to the date which is the earlier of:

- (i) the date on which all amounts due in respect of the Zero Coupon Note have been paid; and
- (ii) the date on which the full amount of the moneys payable has been received by the Agent and notice to that effect has been given in accordance with Condition 14.

**7. Taxation**

**(a) Where the Issuer is Nestlé Holdings, Inc.**

The Issuer or, if the Note is guaranteed, the Guarantor (if the Guarantor is obliged to make payments under the Guarantee) will, subject to the exceptions and limitations set forth below and to the extent permitted by law, pay as additional interest on a Note such additional amounts as are necessary in order that the net payment by the Issuer, the

Guarantor or any Paying Agent of the principal of and interest on a Note, Receipt or Coupon to a holder who is a Non-U.S. Holder (as such term is defined below), after deduction for any present or future tax, assessment or governmental charge of the United States (as such term is defined below), or a political subdivision or authority thereof or therein, imposed by withholding with respect to the payment, will not be less than the amount provided for in such Note, Receipt or Coupon to be then due and payable; provided, however, that the foregoing obligation to pay additional amounts shall not apply to:

- (i) any tax, assessment or governmental charge that would not have been so imposed but for the existence of any present or former connection between such holder (or between a fiduciary, settlor, beneficiary, member or shareholder of, or holder of power over, such holder, if such holder is an estate, trust, partnership or corporation) and the United States, including, without limitation, such holder (or fiduciary, settlor, beneficiary, member, shareholder or holder of a power) being considered as:
  - (A) being or having been present or engaged in a trade or business in the United States or having or having had a permanent establishment therein;
  - (B) having a current or former relationship with the United States, including a relationship as a citizen or resident or being treated as a resident thereof;
  - (C) being or having been a controlled foreign corporation or a passive foreign investment company each as defined for United States Federal income tax purposes, a corporation that has accumulated earnings to avoid United States Federal income tax or a private foundation or other tax-exempt organisation; or
  - (D) an actual or a constructive "10-per cent shareholder" of the Issuer as defined in Section 871(h)(3) of the United States Internal Revenue Code of 1986, as amended (the "Code");
- (ii) any holder who is a fiduciary or partnership or other than the sole beneficial owner of the Note or Coupon, but only to the extent that a beneficiary or settlor with respect to such fiduciary or member of such partnership or a beneficial owner of the Note, Receipt or Coupon would not have been entitled to the payment of an additional amount had such beneficiary, settlor, member or beneficial owner been the holder of such Note, Receipt or Coupon;
- (iii) any tax, assessment or governmental charge that would not have been imposed or withheld but for the failure of the holder, if required, to comply with certification, identification or information reporting or any other requirements under United States income tax laws and regulations, without regard to any tax treaty, with respect to the payment, concerning the nationality, residence, identity or connection with the United States of the holder or a beneficial owner of such Note, Receipt or Coupon, if such compliance is required by United States income tax laws and regulations, without regard to any tax treaty, as a precondition to relief or exemption from such tax, assessment or governmental charge;
- (iv) any tax, assessment or governmental charge that would not have been so imposed or withheld but for the presentation by the holder of such Note, Receipt or Coupon for payment on a date more than 30 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;
- (v) any estate, inheritance, gift, sales, transfer, excise, wealth or personal property tax or any similar tax, assessment or governmental charge;
- (vi) any tax, assessment or governmental charge that is payable otherwise than by withholding by the Issuer, the Guarantor or a Paying Agent from the payment of the principal of or interest on such Note, Receipt or Coupon;
- (vii) any tax, assessment or governmental charge required to be withheld by any Paying Agent from such payment of principal of or interest on any Note, Receipt or Coupon, to the extent such payment can be made without such withholding by any other Paying Agent;
- (viii) any tax required to be withheld or deducted from a payment to an individual which is required to be made pursuant to (I) the European Council Directive 2003/48/EC (the "EU Savings Tax Directive") or any law implementing or complying with, or introduced in order to conform to, such Directive or law or (II) in respect of Swiss Notes, the Agreement between the European Community and the Confederation of Switzerland dated 26 October 2004 (the "Swiss Savings Tax Agreement") providing for measures equivalent to those set out in the EU Savings Tax Directive or any law implementing or complying with, or introduced in order to conform to, the Swiss Savings Tax Agreement; or
- (ix) any combination of items (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii).

As used in this Condition and, if applicable, Condition 6, "United States" means the United States of America, the Commonwealth of Puerto Rico and each possession of the United States of America and place subject to its jurisdiction. A "Non-U.S. Holder" is a person other than a U.S. Person. For this purpose, A "U.S. Person" is a person



that is, for U.S. Federal income tax purposes, (i) an individual citizen or resident of the United States, (ii) a corporation, partnership or other business entity organized in or under the laws of the United States or its political subdivisions, (iii) a trust subject to the control of a U.S. person and the primary supervision of a U.S. court or (iv) an estate the income of which is subject to U.S. Federal income taxation regardless of its source.

**(b) *Where the Issuer is Nestlé Finance International Ltd.***

All payments of principal and interest in respect of the Notes by the Issuer or the Guarantor (if the Guarantor is obliged to make payments under the Guarantee) will be made without withholding or deduction for or on account of any present or future taxes or duties of whatever nature imposed or levied by or on behalf of Luxembourg or any province, territory or other political subdivision or any authority thereof or therein having power to tax, unless such withholding or deduction is required by law. In the event that the Issuer, the Guarantor or any agent of the Issuer or the Guarantor is required by law to make such withholding or deduction, the Issuer or the Guarantor will pay to the extent permitted by law such additional amounts as shall be necessary in order that the net amounts received by the holders of the Notes, Receipts 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, Receipts 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, Receipt or Coupon:

- (i) presented for payment by or on behalf of a Noteholder, Receiptholder or Couponholder who is liable for such taxes or duties in respect of such Note, Receipt or Coupon by reason of his having some connection with Luxembourg other than the mere holding of such Note, Receipt or Coupon; or
- (ii) presented for payment more than 30 days after the Relevant Date (as defined in paragraph (c)) 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; or
- (iii) presented for payment at the specified office of a Paying Agent in Luxembourg; or
- (iv) presented for payment by or on behalf of a Noteholder, Receiptholder or Couponholder who would not be liable for such taxes or duties in respect of such Note, Receipt or Coupon by making a declaration of non-residence or other similar claim for exemption to the relevant tax authority; or
- (v) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to (I) the EU Savings Tax Directive or any law implementing or complying with, or introduced in order to conform to, such Directive or law or (II) in respect of Swiss Notes, the Swiss Savings Tax Agreement providing for measures equivalent to those set out in the EU Savings Tax Directive or any law implementing or complying with, or introduced in order to conform to, the Swiss Savings Tax Agreement; and/or
- (vi) presented for payment by or on behalf of a holder who would be able to avoid such withholding or deduction by presenting the relevant Note, Receipt or Coupon to another Paying Agent in a Member State of the European Union.

**(c) *In relation to issues by Nestlé Finance International Ltd. or issues by Nestlé Holdings, Inc. which are guaranteed***

All payments in respect of the Notes by the Guarantor shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature ("Taxes") imposed or levied by or on behalf of Switzerland, or any political sub-division of, or any authority in, or of, Switzerland having power to tax, unless the withholding or deduction of the Taxes is required by law. In the event that the Issuer or the Guarantor or any agent of the Issuer or the Guarantor is required by law to make such withholding or deduction, the Guarantor will pay to the extent permitted by law such additional amounts as may be necessary in order that the net amounts received by the Noteholders, Receiptholders and Couponholders after the withholding or deduction shall equal the respective amounts which would have been receivable in respect of the Notes, Receipts or, as the case may be, Coupons in the absence of the withholding or deduction; except that no additional amount shall be payable in relation to any payment in respect of any Note, Receipt or Coupon:

- (i) presented for payment by or on behalf of a person liable to such tax, duty or charge in respect of such Note, Receipt or Coupon by reason of his having some connection with Switzerland other than the mere holding or ownership of such Note, Receipt or Coupon;
- (ii) presented for payment more than 30 days after the Relevant Date except to the extent that a holder would have been entitled to additional amounts on presenting the same for payment on the last day of the period of 30 days;

- (iii) presented for payment to, or to a third party on behalf of, a holder who would be able to avoid such withholding or deduction by making a declaration of non-residence or similar claim for exemption but fails to do so;
- (iv) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to (I) the EU Savings Tax Directive or any law implementing or complying with, or introduced in order to conform to, such Directive or law or (II) in respect of Swiss Notes, the Swiss Savings Tax Agreement providing for measures equivalent to those set out in the EU Savings Tax Directive or any law implementing or complying with, or introduced in order to conform to, the Swiss Savings Tax Agreement; and/or
- (v) presented for payment by or on behalf of a holder who would be able to avoid such withholding or deduction by presenting the relevant Note, Receipt or Coupon to another Paying Agent in a Member State of the European Union.

As used herein, 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 Agent 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.

## **8. Prescription**

The Notes, Receipts and Coupons will become void unless presented for payment within a period of ten years (in the case of principal) and five years (in the case of interest) after the Relevant Date (as defined in Condition 7(c)) 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 8 or Condition 5(b) or any Talon which would be void pursuant to Condition 5(b).

## **9. Events of Default**

If any of the following shall occur and be continuing:

- (i) in the case of any Issuer:
  - (A) default in the payment of (1) principal on the Notes or (2) any interest or any other amount on the Notes for 30 days after such interest or other amount on the Notes becomes due; or
  - (B) default by the Issuer in the due performance or observance of any obligation, condition or other provision under or in relation to the Notes if such default shall not have been cured within 60 days after written notice thereof having been given to the Issuer and the Agent by the holders of 25 per cent. or more in principal amount of the Notes then outstanding; or
  - (C) default by the Issuer or any Principal Subsidiary (as defined below) of the Issuer in the payment of any amount in excess of U.S.\$100,000,000 (or its equivalent in any other currency or currencies) due under any evidence of indebtedness for money borrowed by the Issuer or any Principal Subsidiary of the Issuer or under any instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Issuer or a Principal Subsidiary if such default shall continue beyond any period of grace allowed to the Issuer or (as the case may be) Principal Subsidiary in respect of such indebtedness for borrowed money, or in the event that any such indebtedness for borrowed money shall have become repayable before the due date thereof as a result of acceleration of maturity caused by the occurrence of any default unless the existence of such default is being disputed in good faith and proceedings have been commenced in competent courts having jurisdiction (in which case such event shall not constitute an event of default in respect of the Notes so long as the dispute shall not have been finally adjudicated); or
- (ii) where the Issuer is Nestlé Holdings, Inc. whether or not the Notes are guaranteed:
  - (A) the entry of a decree or order for relief by a court having jurisdiction in the premises (1) in respect of the Issuer or a Principal Subsidiary of the Issuer in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or (2) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Issuer or a Principal Subsidiary of the Issuer or for any substantial part of the property of the Issuer or a Principal Subsidiary of the Issuer, or (3) ordering the winding up or liquidation of the affairs of the Issuer or a Principal Subsidiary of the Issuer and, in each case, the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or

- (B) the Issuer or a Principal Subsidiary of the Issuer commencing a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consenting to the entry of an order for relief in an involuntary case under any such law or consenting to the appointment of or the taking of possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Issuer or a Principal Subsidiary of the Issuer, or the making by the Issuer or a Principal Subsidiary of the Issuer of a general assignment for the benefit of creditors, or the failure by the Issuer or a Principal Subsidiary of the Issuer generally to pay its debts as they become due, or the taking by the Issuer or a Principal Subsidiary of any corporate action in furtherance of any of the foregoing; or
- (iii) where the Issuer is Nestlé Holdings, Inc. and the Notes are not guaranteed, the Issuer is wound up, dissolved or otherwise ceases to carry on its business, except in connection with a merger or other reorganisation where, pursuant to the terms of the Agency Agreement, the surviving company expressly assumes all the obligations of the Issuer with respect to the Notes;
- (iv) where the Issuer is Nestlé Finance International Ltd. or the Issuer is Nestlé Holdings, Inc. and the Notes are guaranteed:
  - (A) the Issuer is wound up, dissolved or otherwise ceases to carry on its business, except in connection with a merger or other reorganisation pursuant to which the surviving company expressly assumes all the obligations of the Issuer with respect to the Notes, which obligations are unconditionally and irrevocably guaranteed by the Guarantor on terms substantially the same as those of the Guarantee; or
  - (B) default by the Guarantor in the due performance or observance of any obligation, condition or other provision under or in relation to the Guarantee of the Notes if such default shall not have been cured within 60 days after written notice thereof having been given to the Guarantor and the Agent by the holders of 25 per cent. or more in principal amount of the Notes then outstanding; or
  - (C) default by the Guarantor in the payment of any amount in excess of U.S.\$100,000,000 (or its equivalent in any other currency or currencies) due under any evidence of indebtedness for borrowed money by the Guarantor or under any instrument which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Guarantor if such default shall continue beyond any period of grace allowed to the Guarantor in respect of such indebtedness for borrowed money, or in the event that any such indebtedness for borrowed money shall have become repayable before the due date thereof as a result of acceleration of maturity caused by the occurrence of any default unless the existence of such default is being disputed in good faith and proceedings have been commenced in competent courts having jurisdiction (in which case such event shall not constitute an event of default in respect of the Notes so long as the dispute shall not have been finally adjudicated); or
  - (D) the Guarantor applies for or is subject to an amicable settlement with its creditors (*accord amiable*), or admits in writing that it is insolvent, or seeks or resolves to seek its judicial reorganisation (*concordat*), or the transfer of the whole of its business (*cession totale de l'entreprise*) or any such proceedings are instituted against it and remain undismissed for a period of 60 days or are uncontested, or it otherwise institutes or resolves to institute other proceedings for bankruptcy (*faillite*), judicial reorganisation, winding up, dissolution, liquidation, restructuring (*assainissement*), stay of bankruptcy proceedings (*ajournement de la faillite*) or any similar proceedings (or any such proceedings are instituted against it and remain undismissed for a period of 60 days or are uncontested), or makes conveyance or assignment for the benefit of, or enters into a composition with substantially all its creditors generally; or
  - (E) the Guarantor is wound up, dissolved or otherwise ceases to carry on its business, except in connection with a merger or other reorganisation pursuant to which the surviving company expressly assumes all the obligations of the Guarantor under the Guarantee; or
  - (F) the Guarantee ceases to be the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms, or the Guarantor contests or denies the validity of the Guarantee,
- (v) where the Issuer is Nestlé Finance International Ltd.:
  - (i) a situation of illiquidity (*cessation de paiements*) and absence of access to credit (*credit ébranlé*) within the meaning of Article 437 of the Luxembourg Commercial Code; (ii) an insolvency proceeding (*faillite*) within the meaning of Articles 437 ff. of the Luxembourg Commercial Code or any other insolvency proceedings pursuant to the Council Regulation (EC) N° 1346/2000 of 29 May 2000 on insolvency proceedings; (iii) a controlled management (*gestion contrôlée*) within the meaning of the grand ducal regulation of 24 May 1935 on controlled management; (iv) a voluntary arrangement with creditors (*concordat préventif de faillite*) within the meaning of the law of 14 April 1886 on arrangements

to prevent insolvency, as amended; (v) a suspension of payments (*sursis de paiement*) within the meaning of Articles 593 ff. of the Luxembourg Commercial Code; (vi) voluntary or compulsory winding-up pursuant to the law of 10 August 1915 on commercial companies, as amended; or (vii) any such proceedings instituted against it and remain undismissed for a period of 60 days or are uncontested, or it otherwise institutes or resolves to institute other proceedings for bankruptcy, judicial reorganisation, winding up, dissolution or liquidation or any similar proceedings (or any such proceedings are instituted against it and remain undismissed for a period of 60 days or are uncontested) or makes a conveyance or assignment for the benefit of, or enters into a composition with, substantially all of its creditors generally,

then:

- (a) in the case of any of the events under sections (i) (A), (B) and (C), (ii)(A) and (B), (iii), (iv)(A) and (v), the holder of any Note issued by the Issuer; or
- (b) in the case of any of the events under sections (iv)(B) to (F), the holder of any Note issued by Nestlé Finance International Ltd. or Nestlé Holdings, Inc., as the case may be,

may, by written notice to the Agent, declare such Note to become due and payable at its Early Redemption Amount, together with accrued interest (if any) thereon, as of the date on which such notice is received by the Agent and such Note shall accordingly become so due and payable on such date unless prior to such date all such defaults in respect of the relevant Note shall have been cured.

The term "Principal Subsidiary" shall mean any Subsidiary of the Issuer representing 10 per cent. or more of the consolidated gross assets of the Issuer as shown on the most recently prepared audited consolidated financial statements of the Issuer and its consolidated subsidiaries as of the end of the most recent fiscal year of the Issuer. Solely for the purposes of determining whether a Subsidiary shall represent 10 per cent., or more of the consolidated gross assets, such Subsidiary shall be deemed to own the consolidated gross assets of its Subsidiaries.

#### **10. Replacement of Notes, Receipts, Coupons and Talons**

Should any Note, Receipt, Coupon or Talon be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Agent 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, Receipts, Coupons or Talons must be surrendered before replacements will be issued.

#### **11. Agent and Paying Agents**

The names of the initial Agent and the other initial Paying Agents and their initial specified offices are set out below.

The Issuer and the Guarantor (if applicable) are entitled to vary or terminate the appointment of any Paying Agent and/or appoint additional or other Paying Agents and/or approve any change in the specified office through which any Paying Agent acts, provided that:

- (i) so long as the Notes are listed on any stock exchange or admitted to listing or trading by any other relevant authority, there will at all times be a Paying Agent with a specified office in such place as may be required by the rules and regulations of the relevant stock exchange or other relevant authority;
- (ii) there will at all times be a Paying Agent (which may be the Agent) with a specified office in a city in continental Europe;
- (iii) there will at all times be an Agent;
- (iv) there will at all times be a Paying Agent in a Member State of the European Union that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any law implementing or complying with, or introduced in order to conform to, such Directive; and
- (vi) so long as any Swiss Notes remain outstanding, there will at all times be a Paying Agent having a specified office in Switzerland and the Issuer and the Guarantor (if applicable) will at no time maintain a Paying Agent having a specified office outside Switzerland in relation to such Notes.

In addition, the Issuer and the Guarantor (if applicable) shall forthwith appoint a Paying Agent having a specified office in New York City in the circumstances described in the final paragraph of Condition 5(b). Any variation, termination, appointment or change shall only take effect (other than in the case of insolvency, when it shall be of immediate effect) after not less than 30 or more than 45 days' prior notice thereof shall have been given to the Noteholders in accordance with Condition 14.

## **12. 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 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 8. Each Talon shall, for the purposes of these Terms and Conditions, be deemed to mature on the Interest Payment Date on which the final Coupon comprised in the relative Coupon sheet matures.

## **13. Substitution**

The Issuer may be replaced and the Guarantor or any subsidiary of the Guarantor may be substituted for the Issuer as principal debtor in respect of the Notes, Receipts and Coupons, without the consent of the Noteholders, Receiptholders or Couponholders. If the Issuer shall determine that the Guarantor or any such subsidiary shall become the principal debtor (in such capacity, the "Substituted Debtor"), the Issuer shall give not less than 30 nor more than 45 days' notice, in accordance with Condition 14, to the Noteholders of such event and, immediately on the expiry of such notice, the Substituted Debtor shall become the principal debtor in respect of the Notes, Receipts and the Coupons in place of the Issuer and the Noteholders, Receiptholders and the Couponholders shall thereupon cease to have any rights or claims whatsoever against the Issuer. However, no such substitution shall take effect (i) if the Substituted Debtor is not the Guarantor, until the Guarantor shall have entered into an unconditional and irrevocable guarantee substantially in the form of the Guarantee in respect of the obligations of such Substituted Debtor, (ii) in any case, until the Substituted Debtor shall have provided to the Agent such documents as may be necessary to make the Notes and the Agency Agreement its legal, valid and binding obligations, (iii) until such Substituted Debtor shall have agreed to indemnify each Noteholder, Receiptholder and Couponholder against (a) any tax, duty, fee or governmental charge which is imposed on such holder by the jurisdiction of the country of its residence for tax purposes and, if different, of its incorporation or any political subdivision or taxing authority thereof or therein with respect to such Note, Receipt or Coupon and which would not have been so imposed had such substitution not been made, (b) any tax, duty, fee or governmental charge imposed on or relating to the act of substitution and (c) any costs or expenses of the act of substitution and (iv) until such Substituted Debtor shall have been approved by the relevant authorities as able to issue the relevant Notes. Upon any such substitution, the Notes, Receipts and Coupons will be modified in all appropriate respects.

## **14. Notices**

All notices regarding the Notes shall be validly given if published in a leading English language daily newspaper of general circulation in London. It is expected that such publication will be made in the Financial Times in London. The Issuer shall also ensure that notices are duly published in a manner which complies with the rules of any stock exchange or other relevant authority on which the Notes are for the time being listed or by which they have been admitted to trading. 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.

Until such time as any Definitive Notes are issued, there may, so long as any Global Note is or are held in its or their entirety on behalf of Euroclear and Clearstream, Luxembourg, be substituted for such publication in such newspapers the delivery of the relevant notice to Euroclear and 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 or are admitted to trading by another relevant authority and the rules of that stock exchange or 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 the third day after the day on which the said notice was given to Euroclear and Clearstream, Luxembourg, or on such other day as is specified in the applicable Final Terms.

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

The holders of Coupons, Receipts or Talons shall be deemed to have received any notice duly given to Noteholders.

Notices in respect of Swiss Notes shall be validly given through the Swiss Agent by means of electronic publication on the internet website of the SWX Swiss Exchange ([www.swx.com](http://www.swx.com)).

## 15. Meetings of Noteholders, Modification and Waiver

The Agency Agreement contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of certain modifications of the Notes, the Receipts, the Coupons or certain provisions of the Agency Agreement (certain provisions of which may not, under existing law, be materially altered). Such a meeting may be convened by the Issuer or Noteholders holding not less than five 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 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, Receipts or Coupons (including modifying the date of maturity of the Notes or any date for payment of interest thereof, reducing or cancelling the amount of principal or the rate of interest payable in respect of the Notes or altering the currency of payment of the Notes, Receipts or Coupons), the necessary quorum for passing an Extraordinary Resolution will be one or more persons holding or representing not less than two-thirds, or at any adjourned such meeting not less than one third, in nominal amount of the Notes for the time being outstanding. The majority required for passing an Extraordinary Resolution is 75 per cent. of the persons voting thereat upon a show of hands or if a poll be duly demanded then by a majority consisting of not less than 75 per cent. of the votes given on such poll. 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 Receiptholders and Couponholders.

No resolution passed at any meeting of Noteholders shall be binding on the Issuer or the Guarantor (if applicable) without the written consent of the Issuer or, as the case may be, the Guarantor.

The Agent, the Issuer and the Guarantor (where applicable) may agree, without the consent of the Noteholders, Receiptholders or Couponholders, to:

- (i) any modification (except as mentioned above) of the Agency Agreement which is not materially prejudicial to the interests of the Noteholders; or
- (ii) any modification of the Notes, the Receipts, the Coupons or the Agency Agreement which is to correct a manifest error or to comply with mandatory provisions of the law of the jurisdiction in which the Issuer is incorporated.

Any such modification shall be binding on the Noteholders, the Receiptholders and the Couponholders and any such modification shall be notified to the Noteholders in accordance with Condition 14 as soon as practicable thereafter.

## 16. Further Issues

The Issuer shall be at liberty from time to time without the consent of the Noteholders, Receiptholders or Couponholders to create and issue further notes ranking *pari passu* in all respects (or in all respects save for the Issue Date, the amount and the date of the first payment of interest thereon and/or the Issue Price) and so that the same shall be assimilated and be consolidated and form a single series with the outstanding Notes and references in these Terms and Conditions to "Notes" shall be construed accordingly.

## 17. Third Party Rights

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.

## 18. Governing Law and Submission to Jurisdiction

The Agency Agreement, the Notes, the Receipts and the Coupons and any non-contractual obligations arising out of or in connection with the Agency Agreement, the Notes, the Receipts and the Coupons are governed by, and shall be construed in accordance with, English law. Articles 86 through 94-8 (inclusive) of the Luxembourg Law of 10 April 1915 concerning Commercial Companies, as amended, shall be expressly excluded.

The Issuer submits for the exclusive benefit of the Noteholders, the Receiptholders and the Couponholders, to the jurisdiction of the English courts for all purposes in connection with the Agency Agreement, the Notes, the Receipts and the Coupons and any non-contractual obligations arising out of or in connection with the Agency Agreement, the Notes, the Receipts and the Coupons and in relation thereto the Issuer has appointed Nestlé Holdings (U.K.) PLC at its principal office of St. George's House, Park Lane, Croydon CR9 1NR, England as its agent for receipt of process on its behalf and has agreed that in the event of Nestlé Holdings (U.K.) PLC ceasing so to act or ceasing to be registered in England it will appoint another person as its agent for service of process. Without prejudice to the foregoing, the Issuer further irrevocably agrees that any suit, action or proceedings arising out of or in connection with the Agency Agreement, the Notes, the Receipts, and the Coupons (including any suit, action or proceedings relating to any non-

contractual obligations arising out of or in connection with the Agency Agreement, the Notes, the Receipts and the Coupons) may be brought in any other court of competent jurisdiction.

The Guarantee is governed by, and shall be construed in accordance with, Swiss law. The place of jurisdiction for any suit, action or proceeding arising out of or in connection with the Guarantee shall be Vevey, Switzerland.