Token purchase agreement: key clauses

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The token purchase agreement governs the primary sale of tokens that exist or will exist at closing. Its difficulties lie in three places. The first is the representations of the purchaser, needed for the regulatory exemptions on which the sale depends. The second is the description of what is sold, a right to receive tokens with defined properties and no others. The third is the allocation of the risk that the regulatory position changes before delivery.[1] The clauses below assume a Swiss issuer selling to professional investors in a private placement.

> **Sale.** The Issuer agrees to sell and deliver to the Purchaser, and the Purchaser agrees to purchase, [number] Tokens at a price of [currency/amount] per Token, on the terms of this Agreement and the Token Terms set out in Schedule 1.

> **Nature of the Tokens.** The Tokens confer only the rights set out in the Token Terms. They do not confer any right to dividends, interest, repayment, a share in profits or assets, voting rights in the Issuer or any

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claim against the Issuer, any foundation or any other person, except as expressly stated in the Token Terms. The Purchaser acknowledges that the value of the Tokens may fall to zero.

Purchaser status. The Purchaser represents that it is a professional client within the meaning of Art. 4 of the Financial Services Act and that it is purchasing for its own account and not with a view to distribution, and that it is [an accredited investor / an institutional investor] within the meaning of s. 4A of the Securities and Futures Act 2001 of Singapore where the Purchaser is resident in Singapore.

AML. Delivery is conditional on the Purchaser having completed the Issuer's onboarding procedure to the Issuer's satisfaction. The Purchaser represents that the funds used to purchase the Tokens are not derived from and do not constitute the proceeds of any criminal activity and that the Purchaser is not a person subject to sanctions administered by SECO, the United Nations, the European Union, the United Kingdom, the United States or Singapore.

Delivery. The Issuer shall deliver the Tokens to the distributed ledger address notified by the Purchaser within [ten] business days after [closing / the Network Launch]. Delivery is complete when the transfer is recorded on the ledger. Risk passes on delivery. The Issuer is not responsible for loss resulting from an incorrect address notified by the Purchaser.

Lock-up. The Purchaser shall not transfer, pledge or otherwise dispose of [percentage] of the Tokens for [period] after delivery and the remainder shall be released in [equal monthly instalments over [period]]. The Issuer may enforce the lock-up through the Token smart contract and the Purchaser consents to that enforcement.

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> **Regulatory change.** If before delivery any competent authority determines, or the Issuer on the advice of counsel concludes, that delivery of the Tokens to the Purchaser would contravene applicable law, the Issuer may terminate this Agreement as to the undelivered Tokens and shall refund the price paid for them [in the currency received / less documented costs], without further liability.
>
> **No advice.** The Purchaser confirms that it has made its own assessment of the Tokens, the Issuer and the Network, has had access to the information it requested, and has not relied on any statement by the Issuer or its representatives other than those in this Agreement and the White Paper dated [date].

The lock-up clause matters for market-abuse analysis as well as for price. An issuer that releases insider tokens into a thin market without disclosure risks the charge of market manipulation under Art. 143 FinMIA or Part 12 of the SFA. A transparent vesting schedule published in the white paper is the usual defence.[2]

Notes

1. The regulatory exemptions that a token purchase agreement typically relies on are Art. 36 FinSA (professional clients, fewer than 500 persons, minimum CHF 100,000, total under CHF 8 million) and SFA ss. 272A, 272B, 274 and 275; see Part E, Chapter IV and Part K, Chapter IV. ↩
2. FinMIA Art. 142 and 143 (insider trading and market manipulation) as applied to tokens that are securities; SFA Part 12, Division 1; see Part E, Chapter X and Part N, Chapter I. ↩

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