

Trade finance facilities

Standard Terms and Conditions

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1. General

- 1.1 **Standard terms and conditions:** Each Trade Facility provided by the Bank to the Customer will be subject to the terms and conditions set out in these Terms. Where a specific clause of these Terms is expressed to apply to all Trade Facilities of a particular class or classes, that clause shall apply in addition to the provisions of clause 1 and clauses 9-16 which apply to Trade Facilities of all classes.
- 1.2 **No obligation:** The Bank's usual lending criteria apply to all Trade Facilities. Nothing in these Terms shall oblige the Bank to make or continue to make any Trade Facility available to the Customer.
- 1.3 **Conditions precedent:** The Bank shall not be obliged to make any Trade Facility available to the Customer unless:
- (a) the Bank has received a properly completed Application signed by one or more Authorised Signatories in accordance with an executed account mandate or operating authority, as appropriate;
 - (b) the Bank has notified the Customer that it is willing to provide the Trade Facility requested in the Application;
 - (c) any security required by the Bank in relation to the Trade Facility has been provided and is in a form acceptable to the Bank;
 - (d) the Customer has provided to the Bank such other documents as requested by it;
 - (e) any fees or commission payable to the Bank in relation to the Trade Facility have been paid; and
 - (f) the representations and warranties set out in clause 14 are true and correct on the date the Trade Facility is to be provided by reference to circumstances existing on that date.

Specific Trade Facilities

2. *Import Documentary Credits and Standby Credits*

2.1 **General:** Without limiting any other right, power or remedy the Bank may have under these Terms or otherwise, the provisions of this clause 2 shall apply to each Credit opened or established by the Bank at the Customer's request.

2.2 **Opening/establishment:**

- (a) **Form:** The Bank shall determine the type, terms and form of each Credit opened or established by it at the Customer's request.
- (b) **Reimbursement:** The Customer shall pay upon demand any amount which the Bank pays under or in connection with a Credit (whether before or after the expiry date of the Credit) together with interest and all costs, charges and expenses which are incurred by the Bank or for which the Bank becomes liable in connection with the Credit.
- (c) **Default:** If the Customer fails to reimburse the Bank as required by clause 2.2 (b) the Bank may, if applicable, at any time (before or after arrival):
 - (i) sell any Documents or Goods to which the Credit relates and debit the Customer's account with any shortfall; and/or
 - (ii) cause such Goods to be landed, stored and insured against fire and other risks; and/or
 - (iii) collect any sums due and payable or to become due and payable under any insurance policy for such Goods.
- (d) **No liability:** Neither the Bank nor its agents, correspondents or representatives shall be liable to the Customer, nor shall the Customer's obligations under these Terms or in relation to any Credit be reduced, terminated or affected in any way by:
 - (i) falsity, inaccuracy, insufficiency or forgery of the description, quantity, quality or value of any Goods to which the Credit relates or of any charges in relation to such Goods as stated in any invoices or Document;
 - (ii) any defect in, or invalidity of, any documents tendered including any falsity, inaccuracy, insufficiency or forgery of or in any demand which on its face purports to be a demand signed or authorised pursuant to the Credit or any certificate issued pursuant to the Credit or in any tested cable, telex or document which on its face purports to be signed or authorised under the Credit;
 - (iii) any defect in, or invalidity or unenforceability of, any agreement or arrangement in relation to which the Credit is issued;

- (iv) delays, errors or non-delivery in transmission of telecommunications, teletransmissions, correspondence or documents to, from or between the Bank's agents, correspondents or representatives;
- (v) delays, loss or damage in respect of any Goods to which the Credit relates;
- (vi) the shipper's charges on any Goods to which the Credit relates;
- (vii) any variation in the instructions agreed to by the Bank and/or its agents, correspondents or representatives or any negotiating banks required by the law and/or commercial practice of the country in which any draft or Bill is negotiated or presented for acceptance or payment;
- (viii) any insolvency, bankruptcy, liquidation or cessation of existence of any person;
- (ix) the granting of any time, credit, indulgence or other concession to any person by the Bank;
- (x) any impossibility or illegality in performance of these Terms or the Credit or any other agreement or act of any governmental authority or court, or any law, regulation or order affecting the terms of these Terms or the Credit;
- (xi) any failure to obtain any governmental approval or licence necessary or appropriate in connection with these Terms or the Credit; or
- (xii) any other cause or circumstance of any nature affecting these Terms or the Credit.

(e) **ICC Rules:** The ISP98 and the URR shall apply to each Credit.

2.3 The Customer acknowledges that:

- (a) a Credit is irrevocable and, other than as permitted by the ISP98, cannot be cancelled or altered without the written agreement of all relevant parties; and
- (b) a Credit is by its nature a separate transaction from any contract between the Customer and any other party.

As such, the Customer further acknowledges:

- (a) that the Bank is not obliged to notify the Customer prior to making a payment or accepting drafts, claims or drawings under the Credit; and
- (b) that the Bank is entitled to make any payment or accept any draft, claim or drawing under the Credit if it determines that the Documents comply with the Credit notwithstanding notice from the Customer of any claim or defence the Customer may have against the beneficiary of the Credit.

3. *Export Documentary Credits*

3.1 **General:** Without limiting any other right, power or remedy the Bank may have under these Terms or otherwise, the provisions of this clause 3 shall apply to each Credit paid, accepted, negotiated, discounted, advised or confirmed, as applicable, by the Bank at the Customer's request.

3.2 **Negotiation/payment/deferred payment/acceptance credits:**

- (a) **Further conditions to Bank's obligations:** In addition to the requirements of clause 1.3, the Bank will not be obliged to accept Bills, negotiate and/or discount, or make payment (whether at sight or at a term) under a Credit unless:
- (i) the Customer delivers to the Bank the Credit, all amendments to the Credit requested or accepted by the Customer and agreed by the Bank, and/or any Bills issued under the Credit and all Documents required by the Credit no later than the time and date specified in the Credit;
 - (ii) in the case of an acceptance Credit, the Customer presents a Bill drawn on the Bank for acceptance;
 - (iii) the Bank (in its sole discretion) is satisfied that the Credit is complete and regular on its face and, in the case of a Credit to be negotiated, is negotiable by the Bank, and, subject to clause 3.2 (c) (ii), that all Documents delivered are complete and regular on their face, properly endorsed and completed, and comply strictly with the terms of the Credit;
 - (iv) the Customer is named in the Credit as beneficiary; and
 - (v) the Credit is expressed to be subject to the UCP or any other terms or governing law agreed by the Bank in its sole discretion.
- (b) **Payment:** The amount payable to the Customer on payment or discounting of a Drawing, or on discounting of a Bill accepted by the Bank pursuant to a Credit, will be, at the Bank's discretion, either:
- (i) the face amount of the Bill (or, where there is no Bill, the amount of the Drawing), discounted at the rate determined by the Bank as applicable to the Customer (whether in any mandate signed by the Customer or otherwise) and for the term specified in the Application (and where the term specified is "sight" the term shall be the period stipulated by the Bank); or
 - (ii) the face amount of the Bill (or, where there is no Bill, the amount of the Drawing).

The Bank shall promptly credit the amount payable under this clause (after having deducted all charges, disbursements and/or expenses incurred by the Bank in relation to the payment or discounting) to the Customer's settlement account as notified to the Bank.

Where the Bank has paid the face amount of the Bill, or the amount of the Drawing under paragraph (ii) above, or where the Bank has discounted the face amount under paragraph (i) above and has not been reimbursed by the end of the term of discount, the Customer shall pay interest to the Bank at the rate determined by the Bank as applicable to the Customer (whether in any mandate signed by the Customer or otherwise) from the date of discount to the date on which the Bank is reimbursed by the Issuing Bank, Confirming Bank or Reimbursing Bank. Interest under this clause shall accrue on a daily basis.

(c) **Recourse:** Unless:

- (i) the Bank has confirmed the Credit; or
- (ii) the Bank has agreed in writing to discount without recourse,

the Bank shall have full recourse to the Customer under clause 9 whether or not there is any Bill and notwithstanding any defect in, or invalidity or insufficiency of, the Documents required under the Credit. Where there is a Bill the provisions of clause 4 shall also apply.

(d) **Assignment of rights:** On payment by the Bank to the Customer under clause 3.2 (b), all the Customer's right, title and interest in and under the Drawing, the Documents delivered to the Bank under the Credit in relation to the Drawing, the Goods to which those Documents relate, and the proceeds of sale and/or insurance relating to those Goods, shall pass to the Bank free of any charges or encumbrances. The Customer agrees to give the Bank all assistance the Bank may reasonably require to obtain reimbursement of amounts paid to the Customer under clause 3.2 (a).

3.3 **Confirmation of Credits:**

(a) **Documents:** In addition to the requirements of clause 1.3 the Bank will not be obliged to confirm a Credit unless:

- (i) the Customer delivers to the Bank the Credit, all amendments to the Credit accepted by the Customer and agreed by the Bank, and all other Documents required by the Credit no later than the time and date specified in the Credit;
- (ii) the Bank (in its sole discretion) is satisfied that the Credit is complete and regular on its face and that all Documents delivered are complete and regular on their face and comply strictly with the terms of the Credit;
- (iii) the Customer is named in the Credit as beneficiary; and
- (iv) the Credit is expressed to be subject to the UCP or any other terms or governing law agreed by the Bank in its discretion.

- (b) **Claims:** Any claim on the Bank under a Credit confirmed by the Bank must:
- (i) comply with clause 14.2;
 - (ii) contain a statement that the amount claimed is due and payable by the Issuing and/or Confirming Bank under the terms of the Credit and remains unpaid;
 - (iii) if required by the Bank, be accompanied by evidence satisfactory to the Bank that the Documents required under the Credit have been accepted by the Issuing or Confirming Bank, and that bank has undertaken to pay the amount of the claim in accordance with the Credit; and
 - (iv) if required by the Bank, be accompanied by a valid, binding and enforceable assignment (in the form required by the Bank) of the Customer's rights to receive the proceeds under the Credit.
- (c) **Payment:**
- (i) Subject to compliance with this clause 3.3, the Bank shall pay to the Customer the amount of any claim made under a Credit which the Issuing Bank, Confirming Bank or Reimbursing Bank does not pay.
 - (ii) The amount payable by the Bank under this clause in relation to a Credit shall be limited to the maximum amount payable under the Credit less the aggregate of:
 - (aa) all payments made to the Customer under the Credit (whether by the Bank, the Issuing Bank and/or any Confirming Bank or Reimbursing Bank); and
 - (bb) claims made on, but not paid by, the Issuing Bank or Confirming Bank under the Credit if a valid claim is not made under these Terms within 30 days of the due date for payment of the amount concerned.
- (d) **Assignment of rights:** On payment by the Bank to the Customer under clause 3.3 (c) all the Customer's right, title and interest in and under the Credit, the Documents delivered to the Bank under the Credit, the Goods to which those Documents relate, and the proceeds of sale and/or insurance relating to those Goods, shall pass to the Bank free of any charges or encumbrances. The Customer agrees to give the Bank all assistance the Bank may reasonably require to obtain reimbursement of amounts paid to the Customer under clause 3.3 (c).
- 3.4 **No amendment:** The Customer may not agree to any amendment to or renewal of a Credit without the Bank's prior written approval. Any unauthorised amendment or renewal will discharge the liability of the Bank to the Customer in relation to the Credit.
- 3.5 **Transfers:** Where the Bank, at the request of the Customer, acts as transferring bank in respect of a Credit, the Customer indemnifies the Bank under clause 9 in respect of the Bank acting as such.

4. *Bills of Exchange*

- 4.1 **General:** Without limiting any other right, power or remedy which the Bank has under these Terms or otherwise, the provisions of this clause 4 shall apply where the Bank purchases, negotiates or accepts Bills drawn and/or endorsed by the Customer or where the Bank issues Bills drawn on the Customer by the Bank, in each case whether or not the Bills are accompanied by Documents.
- 4.2 **Reimbursement:**
- (a) In the case of any Bill issued by the Bank and drawn on the Customer by the Bank, the Customer shall pay the Bill upon its presentation for payment at maturity.
 - (b) In the case of any Bill drawn by the Customer and accepted by the Bank, the Customer shall upon or prior to the presentation of the Bill for payment at maturity, pay to the Bank an amount equal to the face value of the Bill to enable the Bank to honour the Bill on maturity.
 - (c) If the Customer fails to pay any amount referred to in clause 4.2 (a) or (b) or any other person fails to pay any amount which it is liable to pay to the Bank under a Bill, the Customer shall immediately on demand pay the relevant amount to the Bank together with interest at the rate specified in clause 10.1 or 10.2 until the date of payment.
 - (d) If a Bill is paid by the drawee or acceptor of the Bill in a currency other than Dollars the Customer shall, if directed by the Bank, pay the Dollar Equivalent of the face value of the Bill, together with any interest, charges, expenses and commission that the Bank may have incurred, to the Bank in Dollars or in any other currency nominated by the Bank.
- 4.3 **Dishonour:** If a Bill is dishonoured by non-acceptance or non-payment for any reason:
- (a) the Bank and its agents are authorised to dispose of the Goods to which the Bill relates at the Customer's sole risk and expense without being under any responsibility in respect of such sale;
 - (b) the Bank may at its discretion protest or note the Bill and take any other steps the Bank considers necessary to protect its interest in the Bill;
 - (c) the Bank's acceptance of any Documents relating to the Bill shall not affect or reduce the Customer's liability on the Bill if the proceeds of sale or insurance of the Goods to which the Bill relates are insufficient to cover the amount of the Bill plus interest, charges, expenses and commissions; and

(d) the Bank's rights on the Bill shall not be prejudiced by the Bank's holding of securities in relation to the Bill, nor shall any recourse or proceedings taken by the Bank on the Bill, or the Bank giving time to, or making any arrangements with, or accepting any composition from, any party to the Bill affect the Bank's rights under any such security or the Customer's liability under the Bill or under these Terms.

4.4 **Bank's rights:** Without limiting the provisions of this clause, and without affecting or reducing the Customer's liability to the Bank, the Bank may, at its absolute discretion, take any action including the following:

- (a) delay presentation of any Bill for acceptance or payment; or
- (b) commence and continue any proceedings and take any steps to recover from the acceptors or endorsers of any Bill, any amount due on the Bill, even if the Bank has debited the Customer's account with the amount of the Bill; or
- (c) take conditional acceptance of Bills (including acceptances for honour) and/or extend the due date for payment of such Bills upon such conditions as the Bank thinks appropriate; or
- (d) accept payment from the drawees or acceptors of Bills before maturity under rebate or discount, or negotiate Bills prior to maturity at a discount; or
- (e) accept part payment before maturity and deliver a proportionate part of the Goods to which a Bill relates to the drawee or acceptor of the Bill or the consignee of the related Goods.

4.5 **Waiver:** The Customer waives absolutely any requirement as to notice or protest in respect of any Bill.

4.6 **ICC Rules:** The URC, the URR and the UCP, as applicable, shall apply to each Bill and these Terms.

5. *Import Collections/Import Collection Documents Released in Trust*

5.1 **General:** The Bank may from time to time act as collecting bank in respect of Bills for acceptance or payment by the Customer, or Documents on a cash against Documents basis. In connection with these transactions the Bank may hold Documents until acceptance or reimbursement of the relevant Bill, or payment, by the Customer.

5.2 **Customer's obligations:** If, prior to payment in full by the Customer of its obligations under the Bill the Bank releases the Documents to the Customer, then until the Customer's obligations are satisfied in full:

- (a) the Documents, the Goods to which they relate, and any proceeds of sale or insurance shall be received and held in trust for the Bank;

- (b) the Customer may only deal with the Documents for the following purposes and on the following terms:
 - (i) to obtain delivery of and to warehouse the Goods, in which case warehouse warrants shall be delivered to the Bank on demand;
 - (ii) to deliver the Goods to buyers, in which case the proceeds of sale shall be immediately paid to the Bank;
- (c) the Customer shall return the Documents, and any other documents received in exchange, to the Bank on request (whether or not the purpose for which the Transport Documents were released has been completed);
- (d) the Customer shall promptly comply with any instructions given to the Bank in relation to the Goods or their storage or any proceeds of sale or insurance; and
- (e) as between the Bank and the Customer, the Customer shall be deemed to have unconditionally accepted the Goods notwithstanding any defect in the Goods or that they do not comply with the Transport Documents or any underlying commercial contract. The Customer must immediately pay or accept the relevant Bill which the Customer undertakes to do.

5.3 **ICC Rules:** The URC shall apply to each collection under this clause 5.

6. *Export Collections*

6.1 **General:** The Bank may from time to time at the Customer's request act as remitting bank in respect of Documents and/or Bills drawn by the Customer.

6.2 **Bank's obligations:** The Bank shall in remitting any such collection:

- (a) comply with the instructions of the Customer notified in writing to the Bank; and
- (b) on receipt of payment, promptly credit the amount (after having deducted all charges, disbursements and/or expenses incurred by the Bank in relation to the collection) to the Customer's settlement account as notified to the Bank.

6.3 **Discounting of collections:** The Bank may, in its discretion, agree to discount a collection, in which case the Customer:

- (a) acknowledges that the Bank has full recourse to the Customer on non-payment of any item remitted for collection;
- (b) indemnifies the Bank under clause 9 against any such non-payment; and
- (c) shall pay interest to the Bank at the rate determined by the Bank as applicable from (and including) the date of discount to (but excluding) the date on which the Bank collects full payment or is reimbursed by the Customer. Interest under this clause shall accrue on a daily basis.

6.4 **Direct collections:**

- (a) The Bank may from time to time supply documentary collection schedules (including in electronic form) to the Customer to enable the Customer to complete the schedules and to despatch them directly to another bank.
- (b) The Customer undertakes:
 - (i) to keep any unutilised stocks of the Bank's documentary collection schedules in a secure place under lock and key, or to operate the production of computer-produced documentary collection schedules in a secure manner, in each case with only authorised personnel having access to the same;
 - (ii) to complete the documentary collection schedules in accordance with the instructions attached to them and to ensure they are not completed in such a way as to place the Bank under any liability;
 - (iii) to return any documentary collection schedules (which the Customer acknowledges to be the Bank's property) to the Bank on demand; and
 - (iv) to indemnify the Bank under clause 9.
- (c) The Customer acknowledges that the Bank may terminate the arrangements contemplated by this clause 6.4 immediately upon written notice to the Customer.

6.5 **ICC Rules:** The URC shall apply to each collection under this clause 6.

7. *Bonds/Guarantees/Shipping Indemnities*

7.1 **Terms and conditions:** The provisions of this clause 7 shall apply where the Bank agrees to countersign any indemnity and/or guarantee to enable the Customer to obtain delivery of Goods without production of the relevant Transport Documents or other documents of title, or to guarantee and/or indemnify and/or otherwise act as surety for the obligations of the Customer owed to a third party or parties, or to endorse any Transport Document or other title document to Goods, in each case whether pursuant to a performance bond, tender or bid bond, advance payment guarantee, retention guarantee, ATA carnet, shipping indemnity, endorsement or guarantee by way of aval or otherwise.

7.2 **Release and discharge:** The Customer must obtain the release and discharge of the Bank from any Trade Facility referred to in clause 7.1 immediately on demand. If the Customer fails to do so, it must immediately on demand pay to the Bank an amount equal to the maximum amount for which the Bank may be liable under the relevant Trade Facility, together with all other moneys required to enable the Bank to obtain a full release and discharge.

- 7.3 **Discharge by performance:** The Customer authorises the Bank to obtain the release and discharge of the Bank from any Trade Facility referred to in clause 7.1 by paying to the beneficiary of the Trade Facility, or any other person, the maximum amount for which the Bank may become liable under the Trade Facility, whether or not any demand has been made under the Trade Facility together with all moneys required to enable the Bank to obtain a full release and discharge. The Customer must immediately pay to the Bank on demand an amount equal to the amount paid by the Bank to obtain a full release and discharge from the Trade Facility.
- 7.4 **Shipping indemnities:** In relation to each shipping indemnity signed or countersigned by the Bank, the Customer must use its best endeavours to obtain the Documents relating to the Goods concerned, with all necessary endorsements, and to produce them to the shipping companies or forwarding agents or to the Bank to procure the Bank's full release and discharge from the relevant Trade Facility as early as possible. The Bank is authorised to endorse, in the Customer's name, all relevant Documents so that they may be delivered directly by the Bank to the shipping companies or forwarding agents. In the case of shipments under documentary credit, the Customer undertakes to disregard all discrepancies (if any) between the Documents received and those required by the documentary credit and to accept such Documents as if they conformed with the documentary credit.
- 7.5 **Trust:** Until the Bank has been fully released and discharged from the relevant Trade Facility, the Documents, the Goods to which they relate and any proceeds of sale or insurance shall be received and held in trust for the Bank.
- 7.6 **Waiver of rights to dishonour:** By requesting the Bank to sign an endorsement or guarantee by way of aval, the Customer irrevocably waives its right to dishonour the Bill at maturity.

8. *Trade Finance Loans*

- 8.1 **Approval:** The Customer may only request a trade finance loan if the Bank has advised the Customer that the Customer has a current approved trade finance loan facility. To the extent they are not inconsistent with the terms in these Terms, any trade finance loan is also subject to the terms and conditions set out in any Application accepted by the Bank recording the terms of the trade finance loan facility.

8.2 **Conditions precedent:**

- (a) Each Application must provide the following details of the trade financial loan requested:
 - › currency
 - › amount
 - › term (number of days)
 - › start date
 - › maturity date
 - › details of shipment
 - › full disbursement instructions; and
 - › repayment instructions.
- (b) On receipt of an Application for a trade finance loan the Bank may in its sole discretion agree to the request and on doing so will credit the Customer with the proceeds of the requested loan in accordance with the relevant Application. If the Bank declines an Application it will advise the Customer of its decision.

8.3 **Interest:** Interest payable on each trade finance loan will be:

- (a) calculated from, and including, the date on which the loan is drawdown to, but excluding, the date on which the loan is repaid; and
- (b) at the rate of interest advised by the Bank to the Customer as applying to that trade finance loan.

8.4 **Repayment:**

- (a) Every trade finance loan is uncommitted and repayable on demand by the Bank.
- (b) If no earlier demand is made, the Customer must repay the trade finance loan in full, together with all interest due (“repayment amount”), in the currency in which it is drawn on the maturity date identified in the relevant Application.

8.5 **Prepayment:** If at the Customer’s request the Bank agrees to a trade finance loan being repaid earlier than anticipated in the relevant Application, the Customer agrees that it may incur additional interest costs if an interest adjustment occurs.

Provisions applicable to all trade facilities

9. Indemnities

9.1 **General indemnity:** The Customer indemnifies the Bank against:

- (a) all claims, liabilities, damages, losses and payments; and
- (b) all costs, charges and expenses (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon), incurred or sustained in any jurisdiction by the Bank, directly or indirectly, under these Terms or in relation to any Trade Facility or any Goods.

9.2 **Authorised Signatories indemnity:** Without limiting the indemnity under clause 8.1, if any Application is signed or any instruction, request, order or acknowledgement is given to the Bank (including in each case by facsimile transmission or in electronic form where applicable) by a person or persons purporting to be authorised to sign any Application or give such instruction, request, order or acknowledgement on behalf of the Customer in relation to any Trade Facility, the Customer:

- (a) indemnifies the Bank against any cost, loss, expense or liability sustained or incurred by the Bank as a result of acting or omitting to act wholly or partly in accordance with such Application, instruction, request, order or acknowledgement; and
- (b) agrees that the Bank will not be liable for, and the Customer will not make any claim against the Bank arising out of:
 - (i) the authenticity or validity of any such Application, instruction, request, order or acknowledgement received by the Bank and purporting to be given in accordance with the operational authorities or mandates for the Trade Facility; or
 - (ii) the Bank having acted or omitted to act wholly or partly in accordance with any such Application, instruction, request, order or acknowledgement, provided such an omission is not caused by the Bank's proven negligence.

9.3 **Currency indemnity:**

- (a) If the Bank receives any amount payable to it under these Terms or in relation to any Trade Facility in a currency ("first currency") other than the currency ("second currency") in which it is payable (whether pursuant to any order or judgement or otherwise), the first currency amount received shall only satisfy the Customer's obligation to pay the second currency amount to the extent the Bank is able, in accordance with its usual practice, to purchase second currency with the amount of the first currency on the date of receipt (or if it is not practicable to make the purchase on that date, on the first date on which it is practicable to do so).

- (b) The Customer indemnifies the Bank against:
 - (i) any loss sustained by the Bank as a result of the amount purchased by it in the second currency being less than the amount due; and
 - (ii) all costs and expenses incurred by the Bank in purchasing the second currency.

9.4 **Payment:** The Customer shall pay to the Bank on demand all amounts payable under the indemnities in this clause 9.

10. Payments/Authority to Debit Accounts

10.1 **Authority to debit:** The Bank is authorised at any time to debit any of the Customer's accounts with all or part of any sum paid by or payable to the Bank under or in accordance with these Terms or a Trade Facility or in connection with any Goods including any commission and interest (at the overdraft rate applicable to the Customer's account from time to time). In relation to any Trade Facility in a foreign currency, any such debit may be passed in New Zealand Dollars at the Bank's rate of exchange prevailing at the date of the debit or, if the debit is passed after payment, at the Bank's rate prevailing when advice of payment is received.

10.2 **Payment on demand:** If the Customer has no account with the Bank, the Customer must pay to the Bank on demand (and in the currency demanded) all sums paid or payable under or in accordance with these Terms or a Trade Facility or in connection with any Goods and any commission and interest (at the rate determined by the Bank in its absolute discretion).

11. Security Interest

11.1 **Security interest:** As a continuing security for the payment of all amounts now or in the future owing by the Customer to the Bank under these Terms or any Trade Facility, the Customer agrees that:

- (a) the Bank shall have a security interest over the Collateral; and
- (b) to the extent the Collateral is for the time being in the Bank's possession, that security interest shall be a pledge and not a charge of the Collateral.

11.2 **No liability:** The Bank shall not be liable or responsible for any loss, damage, depreciation or diminution in value of any Collateral or any Goods whilst they are in the possession, custody or control of the Bank or its employees or agents.

11.3 **Storage:** All Goods represented by, or related to, the Collateral or any other security given to secure a Trade Facility shall be warehoused or stored at the Customer's cost in the Bank's name in warehouses or other places approved by the Bank.

- 11.4 **Land and store:** The Bank may at its absolute discretion land and store and/or reship any Goods to any other port and pay any freight, warehouse, dock and other charges for the Customer's account and all the Documents relating to the Goods shall be deposited with or transferred to the Bank in accordance with its directions. The Customer shall not create or allow to be created or continue any lien or charge in favour of any person (other than the Bank) over the Goods or any Documents and all the Documents shall be duly endorsed (if necessary) and delivered to the Bank as soon as they are received.
- 11.5 **Delivery and endorsement:** The Bank may:
- (a) demand delivery and endorsement to the Bank of all Documents; and
 - (b) exercise all the Customer's rights (if any) as unpaid seller of the Goods or as buyer with non-delivery of the Goods or delivery not in compliance with the contract of purchase of the Goods, as the circumstances require.
- 11.6 **No removal:** The Goods shall be maintained by the Customer in good and marketable condition and shall not be moved or dealt with except with the Bank's consent. The Bank and/or its employees and agents may at any time without notice:
- (a) enter any building or place where the Goods are located;
 - (b) take possession or custody of the Goods or remove them to any other location selected by the Bank; and
 - (c) take any other steps to protect its interest in the Goods as the Bank considers appropriate.
- 11.7 **Repayment:** Where:
- (a) the Customer is intending to repay a Trade Facility from a sale of the Goods to which the Trade Facility relates; or
 - (b) the Bank sells the Goods to recover moneys owing under a Trade Facility; or
 - (c) the Goods have been damaged, destroyed or otherwise lost, if the net proceeds of the sale and/or insurance are insufficient to pay the amount outstanding under that Trade Facility, the Customer shall pay to the Bank on demand the balance of all moneys owing to the Bank under the relevant Trade Facility including all costs, charges and expenses incurred by the Bank and its agents in connection with the foregoing transactions.

12. Insurance

- 12.1 **Obligation to insure:** The Customer shall insure the Collateral and the Goods against loss or damage from any cause in a manner and with an insurance company acceptable to the Bank.
- 12.2 **Policy documents:** If required by the Bank the Customer shall deposit with the Bank any insurance policy with the Bank's interest noted on such policy and provide copies of all receipts for current premiums. If the Customer fails to maintain any insurance or to deposit any policy with the Bank or if any insurance is, in the Bank's opinion, insufficient, the Bank may take out and maintain, at the Customer's expense, any insurance considered appropriate by the Bank.

13. Power of Attorney

- 13.1 **Appointment:** For the purpose of enabling the Bank to obtain the full benefit of these Terms and each Trade Facility the Customer irrevocably appoints the Bank and its attorneys and managers severally to be the attorney of the Customer.
- 13.2 **Extent of power:** Each person appointed as an attorney under clause 13.1 may:
- (a) in the name of the Customer, as its act and deed, and at its expense in all things, do anything which the Customer agrees to do under the provisions of these Terms or which, in that person's opinion, is necessary or expedient to give effect to any right, power or remedy conferred on the Bank by these Terms or any Trade Facility, by law or otherwise (including executing deeds and instruments and commencing, conducting and defending legal proceedings);
 - (b) pay all moneys which that person deems necessary or desirable; and
 - (c) delegate its powers (including this power of delegation) to any person for any period, and revoke a delegation.
- 13.3 **Ratification:** The Customer ratifies anything done by any attorney or any delegate in accordance with this clause 13.

14. Representations and Warranties

- 14.1 **Representations and warranties:** The Customer represents and warrants to the Bank that:
- (a) **Status:** If the Customer:
 - (i) is a company, it is duly incorporated and validly existing under the laws of New Zealand with perpetual corporate existence, capable of suing and being sued, and has the power and authority to own its assets and to carry on its business as, and in such place or places as, it is presently being conducted;

- (ii) is a trustee of a trust, the Customer is authorised under the documents constituting or establishing the trust to incur obligations under the Trade Facility and these Terms; or
 - (iii) is a partner of a partnership, the Customer is authorised under the terms of the partnership agreement to incur on behalf of all partners of the partnership, obligations under the Trade Facility and these Terms;
- (b) **Power and authority:** It has:
 - (i) the power to enter into, exercise its rights and perform and comply with its obligations under the Trade Facility and these Terms; and
 - (ii) taken all necessary action to authorise the entry into, execution and delivery of the Trade Facility and these Terms and the performance of all obligations expressed to be binding on it;
- (c) **Valid obligations:** The Trade Facility and these Terms constitute its legal, valid and binding obligations, enforceable in accordance with its terms;
- (d) **No default:** It is not in default under any law, agreement, document, arrangement, obligation or duty to which it is a party or by which it or any of its assets are bound, and nothing has occurred which constitutes (or which, with the passing of time or the giving of notice or both, would constitute) an event of default, cancellation event, prepayment event or similar event (whatever called) thereunder;
- (e) **No laws violated:** Neither the execution and delivery of the Trade Facility or these Terms nor the performance or observance by it of its obligations under the Trade Facility or these Terms will:
 - (i) violate or contravene any law to which it is subject; or
 - (ii) conflict with, or result in a breach of, any agreement, document, arrangement, obligation or duty to which it is a party or by which any of its assets are bound; or
 - (iii) violate any of the documents constituting it or cause any limitation on any of its powers, or on the right or ability of the customer to exercise those powers, to be exceeded;
- (f) **No litigation:** It is not a party to any litigation or arbitration, nor subject to any administrative proceeding or investigation, the outcome of which might have a material adverse effect on its business, nor is any such litigation, arbitration or administrative proceeding or investigation threatened;
- (g) **Authorisations:** All authorisations required by it or otherwise appropriate for it to obtain in connection with the Trade Facility and these Terms have been obtained or effected and are in full force and effect, and there are no qualifications or limitations affecting those authorisations which have not been notified to the Bank;

(h) **Full disclosure:**

- (i) the information provided by it to the Bank at any time in connection with the Trade Facility and these Terms:
 - (aa) was true and accurate in all material respects and not misleading as at the date on which it was provided; and
 - (bb) provided all material facts in relation to its ability to enter into, perform and comply with its obligations in relation to the Trade Facility and these Terms and it is not aware of any material facts or circumstances that have not been disclosed; and
- (ii) no adverse change has occurred since the date as at which that information was provided which renders that information misleading.

(i) **Accounts:** Its most recent accounts (whether audited or not and whether annual or semi-annual), and all financial information contained in any reports forwarded to the Bank, were prepared in accordance with generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993 and give a true and fair view of the results of the operations of the Customer for the period to which they relate and the financial position of the Customer as at the end of that period and:

- (i) there has been no change in the respective assets, indebtedness, conditions or operations of the Customer since the date at which those accounts were prepared which has had or may have a material adverse effect on it; and
- (ii) there is no material indebtedness (actual or contingent) which was not disclosed in those accounts or in the notes thereto.

14.2 **Repetition:** The representations and warranties contained in clause 14.1 will be deemed to be repeated on the first day of each and every month by reference to the facts and circumstances existing on each such date.

15. *General*

15.1 **No assignment:** The Customer may not assign or transfer any of its rights or obligations under these Terms but the Bank will be free to do so at any time.

15.2 **Notices, requests and claims:** Each notice, request or other communication from the Customer to the Bank for or in relation to, and any claim by the Customer on the Bank pursuant to, any Trade Facility must:

- (a) be made in writing to the address and, in the case of a claim, quoting the reference specified in the Application; and
- (b) be signed by one or more Authorised Signatories in accordance with the Customer's current mandate.

- 15.3 **Notice to Customer:** Each notice to the Customer is to be made by facsimile, personal delivery or post to the latest facsimile number or address provided by the Customer to the Bank and is to be marked for the attention of the person (if any) most recently advised by the Customer to the Bank as the person to be notified.
- 15.4 **Default interest:** If the Customer fails to pay any amount owing pursuant to a Trade Facility when that amount is due, the Bank may charge default interest on that amount (both before and after demand is made and /or judgement given). Default interest will accrue on a daily basis from but excluding the date on which the amount is due up to and including the actual date of full repayment. Such interest is payable on demand. If the Bank chooses to exercise its right to charge default interest it will advise the Customer of the interest rate, which will be in line with default rates normally charged by the Bank.
- 15.5 **Interest, fees, commission, charges, costs and expenses:** The Customer must pay to the Bank on demand all interest, fees, commission, charges, costs and expenses on a full indemnity basis (including legal fees and goods and services and similar taxes thereon) incurred by the Bank and its agents in connection with:
- (a) any Trade Facility (details of applicable rates are available by contacting the Customer's relationship manager or product specialist);
 - (b) the negotiation, preparation, execution, delivery, administration and release of these Terms;
 - (c) the exercise, enforcement or preservation of, or the attempted exercise, enforcement or preservation of, any rights under these Terms or any Trade Facility, or in suing for or recovering any sum due under these Terms or any Trade Facility; and
 - (d) the granting of any waiver or consent under, or any variation of any Trade Facility or these Terms.
- 15.6 **Stamp duty and taxes:** The Customer must pay all stamp, documentary, transaction, registration and other like duties and taxes (including fines, interest and penalties), if any, which may be payable or determined to be payable in connection with the execution, delivery, registration, performance, enforcement or variation of these Terms or any Trade Facility and indemnifies the Bank against all liabilities with respect to or resulting from any delay in paying or omission to pay any such duty or taxes.
- 15.7 **Further assurances:** The Customer agrees to sign or execute and deliver any transfer, deed or other document which the Bank may require to obtain possession of, or perfect title to, the Goods and/or to deliver the Goods to, or vest title to the Goods in, any person, or otherwise for the recovery of any proceeds of sale or insurance.

- 15.8 **Partial invalidity:** If at any time any provision of any Trade Facility is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that illegality, invalidity or unenforceability will not affect the ability of any party to enforce the remaining provisions, nor will the legality, validity or enforceability of those provisions under the law of any other jurisdiction in any way be affected or impaired thereby.
- 15.9 **No implied waivers:** Time will be of the essence of each Trade Facility but no failure on the part of the Bank to exercise, and no delay on its part in exercising, any right, power or remedy under any Trade Facility or under these Terms will operate as a waiver of that right, power or remedy, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy or the exercise of any other right, power or remedy.
- 15.10 **Remedies cumulative:** The rights, powers and remedies provided in these Terms are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 15.11 **Survival of provisions:** The indemnities contained in these Terms will survive the payment of all moneys owing under these Terms or any Trade Facility and the satisfaction of all or any obligations of the Customer in relation to each Trade Facility and the termination of these Terms or any Trade Facility. Each indemnity will constitute a continuing obligation of the Customer which is separate from and independent from its other obligations under these Terms. The Trade Facilities will apply irrespective of any indulgence granted by the Bank and will continue in full force and effect despite any judgement, order, claim or proof for a liquidated amount in respect of any sum due under these Terms or any judgement or order.
- 15.12 **Business purposes:** The Customer acknowledges that each Trade Facility will be used for the purposes of the Customer's business and that any rights and remedies under the Consumer Guarantees Act 1993 shall not apply in respect of a Trade Facility. Where, in fact, the Customer is not a business and the goods and services supplied by the Bank are of a kind ordinarily acquired for personal, domestic or household use, the provisions of the Consumer Guarantees Act 1993 shall have effect notwithstanding the previous sentence.
- 15.13 **Governing law:** These Terms shall be governed by and construed in accordance with New Zealand law.
- 15.14 **Limit on liability:** Neither the Bank or any of its officers, employees or agents shall be liable to the Customer or any other person for any loss, damage or delay, however caused, under or in relation to any Trade Facility or any Goods, unless the loss, damage or delay is directly caused by the wilful default or gross negligence of the Bank or its officers, employees or agents.

15.15 **Schedule prevails:** These Terms apply to every Trade Facility, and replace any other agreements or standard terms which might otherwise apply. The Schedule must be read in conjunction with any other agreements or standard terms applicable to the relationship between the Customer and the Bank (including, without limitation, the terms of the Bank's internet product licence agreements). In the event of any conflict with the provisions of any other document the provisions of these Terms shall prevail.

15.16 **Amendments:** The Bank may add to, cancel or amend any of these terms and conditions at any time. The Customer will be advised of any changes by one of the following methods:

- (a) direct communication with the Customer; or
- (b) advice on display at any of the Bank's branches; or
- (c) public advertisements.

15.17 **Confidentiality:** The Bank owes a duty of confidentiality to its Customers and will keep information it receives from the Customer strictly confidential. The Customer consents to the Bank:

- (a) obtaining such information and making such enquiries about the Customer as the Bank may consider warranted from any source, including credit reference agencies and companies related to the Bank, in relation to any Trade Facility;
- (b) disclosing information about the Customer to credit reference agencies, companies related to the Bank, sureties or assignees or anyone who is considering becoming a surety or assignee; and
- (c) using information about the Customer to send the Customer promotional material from time to time.

The Customer has the right to access personal information (within the meaning of the Privacy Act 1993) about it held by the Bank and request correction of any errors in that information. A fee will usually be payable by the Customer for this.

15.18 **Anti-money laundering and terrorist financing:**

- (a) The Customer acknowledges that:
 - (i) the Bank is subject to anti-money laundering laws in New Zealand and certain other countries (money laundering includes any dealing with the proceeds of or assets used in criminal activity (wherever committed)); and
 - (ii) any dealing with funds or assets of, or the provision of finance to, any person or entity involved or suspected of involvement in terrorism (or any terrorist act) may prohibit the Bank from entering or concluding transactions involving those persons or entities.

- (b) The Customer agrees that the Bank will incur no liability from any action it takes to comply with such laws or regulations.
- (c) The Customer agrees that the Bank may delay, block or refuse to make any payment if the Bank believes on reasonable grounds that making that payment may breach any law in New Zealand or any other country, and the Bank will incur no liability to the Customer if it does so.
- (d) The Customer must provide all information to the Bank which the Bank reasonably requires to comply with any law in New Zealand or any other country.
- (e) The Customer agrees the Bank may disclose information which it provides to the Bank where required by any law in New Zealand or any other country.

16. Definitions

16.1 **Definitions:** In these Terms, unless the context otherwise requires:

“Application” means, in relation to a Trade Facility, an application or acknowledgement letter (in the Bank’s usual form current at the relevant time) for that Trade Facility.

“Authorised Signatories” means those persons notified to the Bank by the Customer in writing as authorised to sign on behalf of the Customer all or any requests, Applications, documents and notices in relation to Trade Facilities.

“Bank” means ANZ National Bank Limited.

“Bill” means a bill of exchange as defined in the Bills of Exchange Act 1908 or a draft.

“Collateral” means all:

- (a) negotiable instruments, securities, documents, or things now or in the future deposited with or consigned to the Bank whether for safekeeping, custody, in the course of trade or otherwise by or from their Customer or by or from any person or persons for the account of or on the instructions of the Customer;
- (b) Transport Documents, warrants, orders, warehouse keeper certificates, invoices or receipts;
- (c) title (whether written, copied or existing electronically or in any other medium) relating to any Goods (and includes the Customer’s right, title and interest in the Goods and all proceeds of sale or insurance in respect of the Goods); and
- (d) letters of credit issued now or in the future, directly or indirectly for the benefit of the Customer, and Bills on which the Bank or the Customer is named as payee (irrespective of whether any such Bill has been endorsed to some other person).

“Confirming Bank” means, in relation to a Credit, the bank (other than the Bank) which confirmed the Credit.

“Credit” means each Standby Credit and each Documentary Credit.

“Customer” means any person or entity that applies for and is issued with any Trade Facility.

“Documentary Credit” means a documentary letter of credit opened or established, negotiated, paid, accepted or confirmed by the Bank at the request of the Customer or advised by the Bank to the Customer.

“Documents” means, in relation to Goods, Transport Documents, other documents of title and any other documents required by a Credit or collection in relation to those Goods.

“Dollars” means the lawful currency of New Zealand.

“Dollar Equivalent” means on any date in relation to an amount in a foreign currency, the amount of Dollars which the Bank certifies it would require to purchase the amount in that foreign currency at a time determined by the Bank on that date in the foreign exchange market selected by the Bank in its discretion.

“Drawing” means a drawing of the whole or part of the amount available under a Credit.

“Goods” means any goods, services, produce or other items to be imported to or exported from New Zealand or sold or purchased within New Zealand by the Customer.

“ISP98” means the rules on International Standby Practices (ISP98) – ICC Publication No.590.

“Issuing Bank” means, in relation to a Credit, the bank (other than the Bank) which opened or established the Credit.

“Reimbursing Bank” means the bank designated by the Issuing Bank from which an authorised bank that has made payment under the Credit may obtain reimbursement.

“Standby Credit” means a standby letter of credit opened or established by the Bank at the request of the Customer.

“Trade Facility” means any of the following:

- (a) the opening or establishment of a letter of credit;
- (b) the acceptance, payment or negotiation of a letter of credit or Bills or drafts drawn under a letter of credit;
- (c) the confirmation of a letter of credit at the request of the Customer as beneficiary under the letter of credit;
- (d) the Bank acting as an advising bank or a transferring bank in respect of a letter of credit;
- (e) the purchase, negotiation, acceptance or discounting of Bills;
- (f) the releasing to the Customer, or any other person at the Customer’s request, of Transport Documents or other title documents relating to Goods purchased by the Customer or control of consignments covered by such Documents;
- (g) the supplying to the Customer of documentary collection schedules for completion and dispatch by the Customer;
- (h) the remitting for collection of Documents and/or Bills drawn by the Customer;
- (i) the endorsement or countersigning of letters of indemnity or guarantees, Transport Documents or other title documents to Goods or otherwise entering into agreements with shipping companies or forwarding agents to enable the Customer or its agents to take delivery of Goods by producing Transport Documents or other title documents;
- (j) the provision of any guarantee, bond or indemnity; and
- (k) a trade finance loan provided pursuant to clause 8.

“Transport Documents” means bills of lading, air way bills, customer assessment notices or other transport documents relating to Goods.

“UCP” means the Uniform Customs and Practice of Documentary Credits, 1993 Revision, of the International Chamber of Commerce as from time to time revised or amended.

“URC” means the Uniform Rules for Collection, 1995 Revision, of the International Chamber of Commerce, as from time to time revised or amended.

“URR” means the current Uniform Rules for Bank to Bank Reimbursement of the International Chamber of Commerce.

16.2 **Interpretation:** Unless the context otherwise requires or it is specifically otherwise stated:

- (a) **“collection”** means the acceptance or payment of a Bill following its presentation by a bank to the payer;

- (b) **“discounting”** means, in relation to a Bill, Credit or Drawing, the Bank making an advance to the Customer (with or without recourse to the Customer) against transfer of the Customer’s rights under the Bill, Credit or Drawing to the Bank;
- (c) **“including”** and similar words do not imply limitation;
- (d) **“month”** means a calendar month;
- (e) **“on demand”** means on demand in writing signed by the Bank;
- (f) **“working day”** means any day other than a Saturday, Sunday or public holiday;
- (g) reference to any law is to New Zealand law, including as amended or re-enacted;
- (h) if the **Customer** comprises more than one person:
 - (i) each of those person’s liability is joint and several;
 - (ii) each reference to the “Customer” is a reference to each such person individually or to any combination of two or more such persons (in any legal relationship or otherwise), or both; and
 - (iii) each reference to an account of the Customer includes all accounts of each of the persons comprising the Customer;
- (i) headings and bolding are only for convenience and may be ignored;
- (j) singular includes plural and vice versa, and the neuter and any gender includes all genders;
- (k) references to a party includes its successors, assigns and representatives and references to a person include any legal entity;
- (l) New Zealand time and dates apply;
- (m) reference to a document or agreement include that document as it is amended, novated or replaced from time to time; and
- (n) **“written”** and **“in writing”** include all means of reproducing words, figures or symbols:
 - (i) in a visible and tangible form by any means and in any medium; and
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and to be retrieved and read.

These Trade Finance Facilities Standard Terms and Conditions are current as at 1st July 2005.

