

## **E-BANKING TRADE SERVICES TERMS AND CONDITIONS (“Terms and Conditions”)**

### **1. Definitions and Interpretation**

In this Terms and Conditions, except where the context otherwise requires:

“**Beneficiary**” means the party in whose favour a Guarantee or Credit is issued;

“**Credit**” means a documentary credit issued or confirmed by the Bank at the request of or for the account of the Customer and any commitment by the Bank to issue such credit and also includes any such credit or commitment as extended or amended at the request of the Customer;

“**Documents**” means all bills, promissory notes and other instruments used for obtaining the payment of money, invoices, documents of title, transportation documents, warehouse receipts, insurance policies, documents stipulated under any documentary credit and other documents relating to goods and/or produce, performance or delivery of services, the performance or discharge of contractual or other obligations, which goods, produce and/or documents are in the name, possession or control of the Bank or held by or to the order of the Bank, whether for custody or any other reason and whether or not in the ordinary course of banking business;

“**Goods**” means goods and/or produce to which the Documents relate;

“**Guarantee**” means any signed undertaking, however named or described, providing for payment on presentation of a complying demand in the case of default on the transaction to which the Guarantee relates;

“**International Rules**” means any of the following rules as are in effect from time to time:

The Uniform Customs And Practice For Documentary Credits (UCP600)

The Uniform Rules For Collections (URC522)

The Uniform Rules For Demand Guarantees (URDG758)

The International Standby Practices (ISP98)

“**Person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

“**Services**” means services to which the Documents relate;

“**Trade Services**” shall mean and include provision of the transaction details and transaction advices stipulated in the e-Banking system and/or fulfilment of such trade transactions by the Bank on behalf of the Customer wherein instructions are given by the Customer to the Bank using the e-Banking system to process, facilitate, finance and advise such trade transactions including but not restricted to BG / SBLC Issuance, Import LC Issuance, Export Bills Collection,

Inward Bills Collection Inquiry, Export LC / BG advising, and/or the processing of such transactions and/or online Payment instructions initiated by the Customer in terms thereof; and

Clause headings are inserted in this Terms and Conditions for convenience of reference only and shall not affect construction. In this Terms and Conditions, unless the context otherwise requires: (i) words denoting the singular include the plural and vice versa; (ii) words importing one gender include every gender; (iii) references to clauses are to the clauses of this Terms and Conditions

## **2. Application**

- 2.1 The Customer agrees and acknowledges that the said platforms have been granted by the Bank to the Customer on a revocable, non-transferable, non-exclusive basis for the sole use of effecting payments through the Bank's E-Banking Service only and for no other purpose.
- 2.2 The Customer agrees and understands that the terms of this Terms and Conditions shall be applicable to the Customer in the event the Customer uses/agrees to use the Trade Services.
- 2.3 The Customer hereby agrees that the following terms and conditions shall apply in relation to the Trade Services which the Bank may agree as applicable, to open, establish or provide in favour of or at the request of the Customer from time to time, at the Bank's absolute discretion, and to such extent, and in such manner as the Bank may think fit in relation to the purchase/import, sale/export or shipment of and other dealings with Goods and Services.

## **3. Documentary Credits**

- 3.1 Each Credit shall be subject to the Uniform Customs and Practice for Documentary Credits as currently in force and all amendments made in subsequent revisions thereof.
- 3.2 The terms and conditions herein contained shall be subject to such further or other terms and conditions which may be agreed upon in respect of any individual Credit which the Bank may open or establish at the request of the Customer.
- 3.3 The Bank are authorised to accept or, as the case may be, to pay all drafts purporting to be drawn under any Credit.
- 3.4 The beneficiaries of each Credit shall be deemed to be the agents of the Customer and the Customer assumes all risks of their acts or omissions.
- 3.5 The Customer shall, as applicable, accept Documents presented and pay or accept upon presentation and pay at maturity all drafts drawn in accordance with the terms of any Credit and will provide the Bank with the necessary funds not later than the applicable date to pay the amount due in accordance with the terms of any Credit.

3.6 The Bank may restrict negotiations under any Credit to the Bank's own offices or to any correspondents, nominees or agents of the Bank's choice and the Bank are authorised to accept and/or pay for the account of the Customer all drafts purporting to be drawn upon the Bank, any of the Bank's offices, correspondents, nominees or agents under any such Credit.

3.7 The Bank shall not be responsible for:

- (a) the existence, character, description, quality, quantity, condition, packing, value or delivery of Goods purporting to be represented by the relative Documents; or
- (b) any difference in character, description, quality, quantity, condition, packing or value of Goods from that expressed in the Documents;
- (c) the accuracy, correctness, validity, sufficiency, genuineness or form of the Documents even if such Documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged;
- (d) the time, place or manner in which shipment may be made, for partial or incomplete shipment or failure or omission to ship any or all Goods; or
- (e) the solvency or responsibility of any insurer, or for any other risk connected with insurance;
- (f) any deviation from instructions, delay, defaults or fraud by the shipper or anyone else in connection with Goods or the shipping thereof; or
- (g) the solvency, responsibility or relationship to the Goods and Services of any party issuing any Documents in connection with the Goods and Services; or
- (h) delay in arrival or failure to arrive of the Goods or;
- (i) delay in delivery or failure to deliver the Services or;
- (j) any of the Documents relating thereto or delay in giving or failure to give notice of arrival or any other notice; or
- (k) any breach of contract between the shippers or vendors and the Customer

3.8 Whenever the Customer wishes to apply to the Bank for the opening of any Credit, the

Customer shall supply such information and instruction as the Bank may require by completing all the relevant fields via Online Instruction. Any such application for Credit is accepted by the Bank on the condition that the Customer will agree to and be bound by the following terms in addition to all other applicable terms of this Terms and Conditions:

- (a) if the Credit applied for is a transferable credit and is freely negotiable the Bank may nominate any agent, nominee or correspondent of its choice as the transferring bank.
- (b) the Bank may at any time in its sole discretion procure, at the cost and expense of the Customer, forward contracts for the foreign currency that may be required to meet drawings under the Credit. If there is no forward contract available for payment of foreign currency under the Credit, drafts honoured or payments otherwise made by the Bank in foreign currency shall be reimbursed by the Customer at the Exchange Rate for such currency together with the Bank's usual charges for conversion and transmission;

- (c) the Customer shall comply with all applicable foreign exchange administration rules and customs of relevant ports and shall procure or cause to be procured promptly and necessary import or export licenses in respect of Goods or Services under the Credit;
- (d) notwithstanding the non-mandatory obligations of the Beneficiary on giving notification of acceptance or rejection of amendments as stipulated in the Uniform Customs and Practice for Documentary Credit, the Bank may at its discretion include a term in the Credit issued by it that the Beneficiary, whether first or second (in case of transferable credit), must give notification for the acceptance or as the case may be rejection of the amendments, within certain period of time after receipt of such amendments as considered fit by the Bank;
- (e) if the Bank has, at the request of the Customer, issued pre-advice of the issuance or amendment of a Credit, the Customer is irrevocably committed to issue or amend (as the case may be) the Credit, in terms not inconsistent with the pre-advice; and
- (f) if the Customer's application for issuance of a Credit contains conditions without stating the documents to be presented in compliance therewith, the Bank is entitled to deem such conditions as not stated and to disregard them.

3.9 In relation to the tender of Documents under any Credit:

- (a) it shall be a sufficient and proper compliance with the terms thereof if the Documents purport to be in order and taken as a whole contain the description of the relevant Goods or Services as given in the Credit and appear complete and regular on their face under general scrutiny and the Bank shall not be responsible for the accuracy, correctness, validity, sufficiency, genuineness or form of the Documents or any endorsements thereon or any misrepresentation therein as to character, description, quantity, quality, condition, packing or value of Goods or Services;
- (b) the Bank may unilaterally decide, whether discrepancies between the Documents and the Credit may be waived and the Bank's decision shall be final although the Bank may, at its sole discretion, consult the opinion of the Customer; and
- (c) if the Bank has authorised the release or delivery of the relative Goods to the Customer or has countersigned or issued an indemnity or guarantee to a carrier or its agents for the Customer to take delivery of the relative goods, the Bank is authorised to honour for the Customer's account all drawings and/or effect payments on the Customer's behalf notwithstanding and irrespective of any discrepancies in the Documents rendered and/or non-compliance with the terms of the Documentary Credit.

3.10 The Bank may at its absolute discretion, accept instructions believed by it to have emanated from any Authorised User(s) and such instructions shall be binding on the Customer and the Bank shall not be under any obligation to verify the identity of the Authorised User(s) giving those instructions.

3.11 The Customer shall hold the Bank free of any liability or responsibility for the consequences arising in respect of any Credit from delay or loss in transit of any message, letter or document, or the delay, mutilation, omission or other error in the transmission

of any cable, telegram, telex or other transmitted message or any error in translation or interpretation of technical terms or arising from any ambiguity in instructions from the Customer.

3.12 In the event of any extension of time for presentation of drafts, acceptances or Documents or any other modification of the terms of any Credit or in the event of any increase in the amount of any Credit at the request of the Customer with or without modification or, as applicable, increase to any other Credit, this Terms and Conditions shall be binding upon the Customer with regard to the Credit so modified or increased with regard to any action taken by the Bank in accordance with such modification or increase.

3.13 The Bank is at liberty at any time to terminate any Credit other than an irrevocable Credit.

#### **4. Bills of Exchange**

4.1 The Customer shall provide the Bank with the necessary funds not later than the applicable date:

- (a) to meet on demand all bills negotiated or endorsed by the Bank for the Customer which may be dishonoured on presentation for acceptance or which may not be paid on the due date thereof according to the original tenure thereof and non-payment of a bill shall be deemed to have occurred if, at that date, the Bank has not received the whole sum due; and/or
- (b) to reimburse the Bank for all advances made against any Documents which may not have been duly taken up on presentation.

4.2 The Bank are hereby authorised upon such conditions as the Bank thinks fit in relation to any bills drawn under any Credit:

- (a) to take conditional acceptance thereof including acceptances for honour and/or to extend the due date for payment thereof;
- (b) to accept payment from the drawees or acceptors before maturity under rebate or discount;
- (c) to accept part payment before maturity and to deliver a proportionate part of the Goods or Services to the drawees or acceptors of the bills or the consignees of the Goods or Services;
- (d) to deliver up the shipping or other documents relating to any bill only upon payment in full or part payment of such bill, notwithstanding that such procedure may be contrary to the previous instructions of the Customer, if the Bank, the Bank's offices, correspondents, nominees or agents deem it advisable;
- (e) at the request of the drawees, to delay presentation of any bill for payment or acceptance, without prejudicing or affecting the liability of the Customer to the Bank in respect of such bill, unless the Bank have accepted explicit instructions from the Customer to the contrary;

- (f) to protest any bill which is dishonoured and to take any other steps which the Bank may consider necessary or desirable to protect the Bank's rights and interest in such bill; and
- (g) to commence and continue any proceedings and to take any steps for the recovery from the acceptors or endorsees of any bill of any amount due in respect thereof, notwithstanding that the Bank may have debited the account of the Customer with the amount of such bill.

## **5. Collection Bills**

- 5.1 The Bank shall not have any obligation to remit funds to the Customer, unless and until the Bank have actually received the funds under the documentary credit/collection. If the Bank at its sole discretion were to release funds to the Customer in anticipation of the Bank's receipt of funds and it subsequently transpired that the Bank did not receive the funds, or if after having released the funds to the Customer, the Bank is required to return the funds to the issuing bank or to any other party, the Customer shall upon the Bank's demand at any time return the funds to the Bank. Without prejudice to the aforesaid, the Bank may at any time reverse the credit entry or debit the funds from any of the Customer's accounts held with the Bank. The Customer shall also pay to the Bank interest (at a rate to be determined by the Bank) from the date of the Bank's demand until final payment thereof or the Customer's refund is received by the Bank.
- 5.2 In the event that any items sent for collection are returned unpaid, the Bank is to forward the same to the Customer. The Bank shall not be held liable for any loss as a result of any delay or document loss in transit.
- 5.3 It is understood that in receiving items for collection, the Bank acts only as the Customer's collecting agent and assumes no responsibility beyond the exercise of due care. The Bank will select the correspondent for collection of documents with reasonable care and will not be liable for any error, default or negligence of the said correspondent nor for losses or delays in transit. If a collecting bank has been nominated by the Customer which is not acceptable by the Bank, the Bank will inform the Customer accordingly and in the event that the Customer proceeds with such collecting bank, then this will be at the Customer's own risk. The Bank or its correspondents may send items directly to the issuing bank/drawee or indirectly through any bank.
- 5.4 Unless otherwise instructed by the Customer, the Customer authorises the Bank to send the drafts/documents by airmail or by courier service. The Bank will select the airmail or courier service company with reasonable care but will not be liable for any error, default or negligence of the said company nor for losses or delays in transit.
- 5.5 The Customer agrees to fully indemnify the Bank for any loss, liability, cost, damages, claim, demand or expense suffered/incurred in connection with non-payment or non-acceptance letter of credit/documents and to pay the Bank interest and commission at the rate specific by the Bank.

- 5.6 In receiving any items for collection the Bank assume no responsibility beyond the duty to exercise reasonable care. The Bank assumes no responsibility for the accuracy, correctness, validity, sufficiency, genuineness or form of the Documents delivered to the Bank, nor for the character, description, quantity, quality, condition, packing, value, genuineness, identity, title of delivery of the Goods to which the Documents relate.
- 5.7 Each collection shall be subject to the Uniform Rules for Collections, International Chamber of Commerce and all amendments made in subsequent revisions thereof.
- 5.8 The Bank reserves the right to construe in any manner any ambiguity in the terms of the Documents and/or the Credit and the Customer irrevocably and unconditionally agrees not to object to the Bank's interpretation if the said interpretation does not conflict with other terms.

## **6. Bills Discounting**

- 6.1 If the drafts/documents have been discounted/negotiated by the Bank subject to final payment:
- (a) it is understood that such discount/negotiation is conditional upon and subject to the collection of the Documents and receipt by the Bank of the corresponding funds in the currency thereof. Where such items are so discounted/negotiated, every amount credited to the Customer's account thereof may at any time before the corresponding funds are received be reversed/debited from the Customer's account, and where instead of crediting the Customer's account, the Bank has made payment to the Customer or to the Customer's order of an amount thereunder, the Customer shall on the Bank's first demand refund the Bank for the same; and
  - (b) the Bank is entitled forthwith to earmark or debit any of the Customer's accounts with the Bank for any amount payable hereunder, and the Customer undertakes that it shall immediately on demand by the Bank deposit with the Bank such sums and/or to provide the Bank with security in kind and value as the Bank consider necessary in relation to all actions, proceedings, liabilities, claims, damages, costs and expenses and all other payments in connection therewith.
- 6.2 In all instances where the Bank has recourse to the Customer:
- (a) for all amount advanced (by way of crediting the Customer's account or payment to the Customer or to the Customer's order) by the Bank to the Customer when items are discounted/negotiated, the Customer shall pay to the Bank interest (at the discount rate as determined by the Bank) from the date of the discount/negotiation until final payment thereof or the Customer's refund is received by the Bank;
  - (b) if any items sent for collection are returned unpaid, the Bank is authorised to forward the same to the Customer by regular mail to the Customer's address registered with the Bank and the Bank will not be liable for any loss as a result thereof or delay/loss in transit.



- (c) the Bank acts only as the Customer's collecting agent and assumes no responsibility beyond the exercise of due care. The Bank will select the correspondent for collection of documents with reasonable care and will not be liable for any error, default or negligence of the said correspondent nor for losses or delays in transit. If a collecting bank has been nominated by the Customer which is not acceptable by the Bank, the Bank will inform the Customer accordingly and in any event that the Customer proceeds with such collecting bank, then this will be at the Customer's own risk. The Bank or its correspondents may send items directly to the issuing bank/drawee or indirectly through any bank; and
- (d) unless otherwise stated in the Online Instruction, the Customer authorise the Bank to send the draft/documents by airmail or by courier service. The Bank will select the airmail or courier service company with reasonable care but will not be liable for any error, default or negligence of the said company nor for losses or delays in transit.

6.3 Where the Bank does not have recourse to the Customer, but it for whatever reason, the Bank is unable to take or faces difficulty in taking recovery action against the issuing bank, the Customer shall render all assistance and execute and do all assurances, acts and things as the Bank may require in connection therewith. The Customer will not, without the Bank's prior written consent, take any action in respect of any of the documents, including, without limitation, agreeing to any waiver, amendment, compromise or settlement of any right or claim thereunder or relating thereto. The Customer agrees to fully indemnify the Bank against all costs, losses and expenses should the Customer breach any of the terms hereof.

6.4 For all cases:

- (a) the Customer confirms that the Bank is the nominated bank under the Credit or that the Credit is freely negotiable/available with any bank;
- (b) the Customer confirms that it has not in any way assigned, charged, mortgaged, pledged or otherwise encumbered any of its rights and claims to payment under the Credit (and will not do so) other than (where required by the Bank) in favour of the Bank and that such rights and claims are valid and fully assignable to the Bank by the Customer without restrictions;
- (c) each discount/negotiation is subject to the Bank's upfront deduction of the discount rate as determined by the Bank; and
- (d) the Bank will have full recourse to the Customer (even if the negotiation is on a without recourse basis) if the issuing bank is prevented or restrained from paying under the documentary credit due to a court order, any regulatory requirement or any directive by any government body, department or personnel.

## **7. Guarantee**

7.1 Issuance of a Guarantee is subject to the Customer's undertaking to fully indemnify and hold the Bank harmless from and against any and all consequences which may arise or



result therefrom and to reimburse to the Bank upon demand any and all payments, costs, losses and damages which the Bank may suffer, sustain or be required to make by reason or on account thereof at any time or times, including all legal and other costs, charges and expenses of whatsoever kind but not limited to the defence of any action irrespective of whether such action had been rightfully or wrongfully defended by the Bank in respect to any enforcement or attempted enforcement of the said Guarantee by any Person.

- 7.2 In the event that a written demand is made by the Beneficiary to the Bank, to pay any sum or sums up to the maximum amount payable in the Guarantee, the Bank has the absolute right and at its sole discretion to make independent judgment as to whether the claim and the amount of the claim comply with the provision of the Guarantee without prior consent and/or further authority from the Customer or enquiring into the validity and legality or otherwise of such payment notwithstanding any contestation on the Customer's part and the Bank need not concern itself with the propriety of any such request or demand and it shall not be a defence to any demand made under this Terms and Conditions nor shall any of the Customer's obligations hereunder be affected or impaired by the fact that the Bank was or might have been justified in refusing payment, in whole or in part of the amount(s) so requested or demanded on any grounds whatsoever. The Customer agrees that any such payment made by the Bank shall be binding on it and shall be accepted by it as conclusive evidence that the Bank is liable to pay or comply with it.
- 7.3 The Customer shall pay the Bank a commission at such rate as may from time to time be charged by the Bank for issuance of the Guarantee.
- 7.4 Where cash collateral Margin is applicable, the Customer hereby authorizes the Bank to debit its account maintained with the Bank for a sum acceptable to the Bank and to place the cash collateral under the Bank's non-interest bearing internal account. The Customer irrevocably and unconditionally authorizes the Bank:
- (a) to utilize the said cash collateral to fully settle all/any claim or demand made under the Guarantee plus any charges, if any; and
  - (b) to debit the Customer's account for payment of any charges, commissions, fees, expense, taxes and all other sum whatsoever and howsoever incurred in relation to and upon issuance of the Guarantee.
- 7.5 If there is insufficient funds in the Customer's account, the Customer shall immediately reimburse the Bank for and in respect of such payment, failing which the Bank is entitled to charge interest at such rate deemed appropriate by the Bank in respect of monies owing from the date such monies are payable until payment is received by the Bank.
- 7.6 The Customer acknowledges that it shall continue to keep the Bank indemnified in the event that the Guarantee issued hereto is extended by the Bank upon the Customer's request. Request for extension shall be conveyed by the Customer to the Bank in such time and form acceptable to the Bank.
- 7.7 In the event of early discharge, the Customer agrees that it shall be released from any liability towards the Bank hereunder only upon return to the Bank of the original Guarantee together with the letter of discharge from the Beneficiary to the satisfaction

of the Bank and until then, its indemnity to the Bank shall remain irrevocable and in full force and effect and continued to be held as the Bank's collateral.

- 7.8 The original Guarantee shall automatically be cancelled upon expiry notwithstanding that the original Guarantee may not be returned to the Bank for cancellation for whatsoever reasons. The Customer shall exert its utmost efforts for the recovery of the original Guarantee and to return it to the Bank forthwith after such recovery.
- 7.9 The Bank reserves its right to impose any additional commission from the date of expiry to the date of actual return of the original Guarantee. Unless otherwise agreed by the Bank, collection of the additional commission shall in no event extend the validity of the Guarantee.
- 7.10 The Bank may at its sole discretion refuse and/or reject and/or cancel and/or decline any issuance, renewal or payment without assigning any reason whatsoever and shall not be liable to the Customer in any manner for any loss or delay caused by such refusal.

## **8. Payments**

- 8.1 The Customer shall pay to the Bank on demand all costs, interest, commissions, charges, disbursements and all other expenses whatsoever and howsoever due to or incurred by the Bank.
- 8.2 Without prejudice to any other rights and remedies which the Bank may have, the Bank shall be entitled (without being obliged to) and is hereby authorised to debit at any time with or without notice as the Bank may deem fit any of the Customer's accounts maintained with the Bank in any jurisdiction to such extent as the Bank deems necessary in its sole discretion all monies due to the Bank including any payment made or obligation incurred in respect of any Credit or any other Trade Services issued/granted at the Customer's request and for all interest, commission, bank charges and other expenses relating to such Trade Services, this Terms and Conditions or the release of the Documents; PROVIDED ALWAYS THAT if any such debiting causes the Customer's account to be overdrawn, interest on the overdrawn amount (which the Bank may charge at such rate determined at its sole and absolute discretion with or without notice to the Customer as the Bank may deem fit) shall form part of the Customer's indebtedness and shall be payable by the Customer accordingly.
- 8.3 The Bank is hereby authorised to apply any monies received from the Customer or any other Person to such account or liability of the Customer as the Bank may at the Bank's absolute discretion determine. The Bank may also in its absolute discretion, at any time and without notice, apply any credit balance to which the Customer is entitled on any account with the Bank in or towards satisfaction of the Customer's obligation and/or liability hereto. For this purpose, the Bank is allowed to purchase, at the Exchange Rate, such other currencies as may be necessary to effect such application with the monies standing to the credit of such account.

- 8.4 If payment of a bill is effected in a currency other than that in which it is drawn neither the Bank, the Bank's offices, the Bank's correspondents, the Bank's nominees or the Bank's agents are responsible for any loss in, exchange which may occur if and when subsequent conversion shall take place, and the Customer hereby irrevocably and unconditionally undertakes to fully indemnify the Bank and keep the Bank fully indemnified, by payment in cash on demand, in respect of any such loss in exchange.
- 8.5 The Bank is hereby authorised at the Bank's absolute discretion to convert into such currency as the Bank may think fit at the Bank's then prevailing Exchange Rate any monies received by the Bank under or by virtue hereof and to debit the account of the Customer with all costs, charges and any loss on exchange thereby incurred.
- 8.6 Payments by the Customer shall be made to the Bank as specified by the Bank without any deduction, set-off, withholding, counterclaim, or condition of any kind except that, if the Customer is compelled by law to make such withholding or deduction, the sum payable by the Customer shall be increased so that the amount actually received by the Bank is the amount it would have received if there had been no withholding or deduction as the case may be.
- 8.7 No payment to the Bank under this Terms and Conditions pursuant to any judgment court order or otherwise shall discharge the obligation of the Customer in respect of which it was made unless and until payment in full has been received in the currency in which it is payable under this Terms and Conditions and, to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of the amount of the obligation, expressed in that currency, the Customer shall be liable for the shortfall.
- 8.8 If any monies paid to the Bank in or towards satisfaction of the Customer's liability and/or obligation under this Terms and Conditions, are required to be repaid by virtue of any law relating to insolvency, bankruptcy or liquidation or for any other reason, the Bank shall be entitled to enforce this Terms and Conditions as if such monies had not been paid.

## 9. Authorisation

The Customer authorises the Bank:-

- 9.1 to appoint any other Person as its correspondent, nominee or agent in connection with the Facilities and the Bank may delegate any of its powers under this Terms and Conditions to such Person;
- 9.2 to notify any other Person of its interest in the Documents and the Goods; and
- 9.3 to make payment immediately when due or on demand under any Credit, Guarantee, indemnity or other commitment which the Bank may have provided in respect of the Documents and/or the Goods without reference to or further authority from the Customer or any other Person, without enquiry as to the validity or otherwise of any Documents, claim or demand (irrespective of any dispute by the Customer) and payment by the Bank shall be binding on the Customer.

## 10. Security

10.1 As continuing security for the payment of all sums in which the Customer may from time to time actually or contingently be indebted or liable to the Bank for any reason and on any account:-

- (a) the Customer hereby pledges, agrees to pledge to the Bank the Documents and any other documents representing or relating to Goods and the Goods represented thereby and such Documents and Goods shall not be subject to any lien, charge, mortgage or other encumbrance in favour of any other Person;
- (b) the Customer shall ensure that all such Documents are promptly endorsed and delivered to the Bank and the Bank is hereby authorised to demand the same as attorney of the Customer;
- (c) the Customer hereby acknowledges that if such Documents or Goods are delivered by the Bank to the Customer, they shall be received by the Customer, on behalf of the Bank, exclusively for the purpose of their sale and, in such event, such Documents, Goods and the proceeds thereof shall be held on trust for the Bank and solely to the Bank's order, all such proceeds shall be paid to the Bank immediately upon receipt without any deduction, set-off, withholding, counterclaim or condition whatsoever and the Bank is hereby authorised at the Bank's absolute discretion to demand and/or receive such proceeds direct from any other Person; and/or
- (d) the Customer hereby assigns to the Bank any rights which the Customer may have as the unpaid seller of Goods.

10.2 The Bank is hereby authorised, at the Bank's absolute discretion, at any time without notice, to enter any premises for the purpose of inspecting or securing possession or custody of the Goods and also to take such steps as the Bank may in the Bank's absolute discretion consider necessary or desirable to protect the Bank's interest in the Goods.

10.3 The Bank shall be entitled to enforce its pledge and may, without demand, notice, legal process or any other action with respect to the customer or any other Person, realise, sell, negotiate or otherwise dispose of all or some of the Documents and the Goods, at any time and in any way it deems expedient, free from any restrictions and claims (and in so doing the Bank shall not be liable for any loss arising out of such realisation, sale, negotiation or disposal) if:

- (a) There is a default in acceptance or payment of any Document;
- (b) The Customer has failed to pay any part of the Trade Services when due or is in default under any of the terms of this Terms and Conditions or a trust receipt relating to the Goods;
- (c) The Customer or any drawee or acceptor of a Document is unable or admits to being unable to pay its debts as they become due, suspends or threatens to suspend making payments (whether of principal or interest) with respect to all, or any class of its debt or is subject to any proceedings in or analogous to insolvency, bankruptcy or

liquidation or if legal process is applied for, levied or enforced against the Documents and/or the Goods or any other assets of the Customer;

(d) Any assets of the Customer have been seized or become subject to receivership or execution under any judgement; or

(e) Any action is threatened or taken which might prejudice the Bank's interest in and rights against the Documents and/or the Goods;

10.4 The Bank may also sell the Goods in such manner and upon such terms as the Bank thinks fit without notice, demand, legal process or any other action with respect to the Customer or to any Person and whenever the Bank considers it desirable, having regard to the then market value of the Goods, that the Goods or any part of the Goods should be sold, realised, negotiated or otherwise disposed of whether or not any contingent or other liability of the Customer to the Bank shall have actually matured.

10.5 The Customer shall pay any deficiency which may remain owing to the Bank after such sale or disposal of the Goods.

10.6 The Bank shall not be liable in any manner whatsoever for any error, default or negligence of any broker and/or agent employed to sell, dispose of or otherwise deal with any Goods or of any other, Person employed for any purpose connected therewith and shall not be responsible to the Customer for the price obtained.

## **11. Insurance**

11.1 The Customer shall keep the Goods fully insured in such manner as the Bank may require against all insurable risks including but not limited to theft, damage by fire, and floods at the Customer's expense.

11.2 If so requested by the Bank, the Customer shall take out on the Bank's behalf and deposit with the Bank insurance policies in respect of the Goods or arrange with the insurer for policies issued in the name of the Customer to be effectively assigned to the Bank or to be endorsed in the Bank's favour (as loss payee/assignee) and/or otherwise ensure that in the event of loss or damage to the Goods the insurance proceeds are paid to the Bank without any deduction, set-off, withholding or counterclaim or condition and to make up any deficiencies should the Goods not have been insured up to the full value or should such value not be recoverable for any reason.

11.3 The Bank is hereby authorised at the Bank's absolute discretion and at the Customer's cost and expense without prior reference to the Customer, to insure the Goods to their full value against all insurable risks in the event that the Customer shall fail to do so.

## **12. Dealings with the Goods**

12.1 The Bank is hereby authorised at the Bank's absolute discretion and for the Customer's account, as applicable, to land, store, transport and warehouse the Goods and, for such purpose, to make arrangements direct with sellers, shippers, carriers and warehouse

keepers and also, at the Bank's absolute discretion and for the Customer's account, to pay all freight, warehousing, dock and other charges relating thereto.

12.2 The Goods shall be dealt with in accordance with such instructions as the Bank may give to the Customer from time to time for the protection of the Bank's interest therein including, without limitation:

- (a) keeping the Goods separate from any other property of the Customer;
- (b) keeping the transactions in relation to the Documents and the Goods separate from its other transaction(s) and the Documents, the Goods, the proceeds of any sale of the Goods and all insurance moneys therefrom shall be kept separate and distinct from the Customer's documents, goods, proceeds of sale or insurance moneys and all other moneys relating to or arising from any other transaction(s);
- (c) giving the Bank such periodical reports and other particulars concerning the Goods as the Bank may from time to time require;
- (d) paying all costs of and incidental to the transportation and storage of the Goods;
- (e) informing the Bank of any event of which it becomes aware which can adversely affect the ability of a buyer to complete the purchase of Goods;
- (f) the Customer will not take any action which might prejudice the value of the Goods and/or the effectiveness of the pledge created under this Terms and Conditions; and/or
- (g) not to permit the Goods to be processed or altered without the prior written consent of the Bank.

12.3 If the Customer should make new objects from the Goods, mix the Goods with any other objects or should the Goods in any way whatsoever, become a constituent of any other object, the Bank will be given ownership of those new objects ("the New Objects") as security for the full payment of all monies and/or liabilities the Customer owes to the Bank hereunder. The Customer agrees that title to the New Objects whether finished or not is to be transferred to the Bank and that such transfer of title will be considered to have taken place through and at the moment of the single operation or event by which the Goods were integrated into the New Objects. Until the Bank's receipt of full payment of all monies and/or liabilities for which the Customer is liable to the Bank hereunder, the Customer shall keep the New Objects and all proceeds or monies payable thereunder for the Bank as fiduciary owner and on trust and if required, shall store those New Objects in such a way that they can be recognised as such.

### **13. Communication**

13.1 Any communication to be made under or in connection with this Terms and Conditions shall be made in writing.

13.2 Any communication, notice or document from the Bank may be delivered personally, by post, telex, cable, facsimile or electronic mail to the Customer's address herein stated

or the Customer's last known address in the Bank's records. Such notice shall be deemed to have been sufficiently served on the Customer and effective:-

- (a) if personally delivered, at the time of delivery;
- (b) if posted, two (2) Business Days after the date of postage;
- (c) in the case of telex or cable, on the next Business Day after the date of transmission;
- (d) in the case of a facsimile, the next Business Day after the date of transmission, provided that the sender has received an answer back confirmation; or
- (e) if by way of electronic mail, when actually received in readable form.

13.3 Any communication, notice or document to be made or delivered to the Bank by the Customer will be effective only when actually received by the Bank and in the case of any electronic mail made by the Customer to the Bank, only if it is addressed in such a manner as the Bank shall specify for this purpose.

13.4 The service of any legal process may be given by prepaid registered post sent to the Customer's address herein stated or the Customer's last known address in the Bank's records and such legal process shall be deemed to have been sufficiently served on the Customer and effective after the expiration of five (5) Business Days from the date it is posted.

13.5 No change in the address of the Customer herein stated howsoever brought about shall be effective or binding on the Bank unless a written notice indicating the change of address has been actually received by the Bank.

13.6 Without prejudice to Clause 16.3 above, the Bank shall be entitled to send the Documents by post (registered or ordinary) to the Customer at its address as stated hereto and/or its last address registered with the Bank or to release the Documents to any Person(s) with the apparent authority or claims to have the authority person(s)/courier(s) purportedly engaged by the Customer to effect such collection and that such posting/release shall be deemed effective release of the Documents to the Customer.

## **14. Miscellaneous**

14.1 The Customer represents and warrants and undertakes to the to the Bank, at all times through the tenure of the Facilities or for so long as any amount remains outstanding or payable in connection with the Facilities, that:

- (a) The transactions involved and contemplated under this Terms and Conditions do not contravene the Strategic Trade Act 2010 ("STA"), including all amendment or supplement made thereof and its regulations and it is fully aware and in full compliance with the requirements connected thereto;
- (b) All necessary permits, licenses, approval required under the STA will be obtained by the Customer for the trade transaction, export, trans-shipment or transit of goods and provision of technical assistance or brokering. A copy of the relevant permit, licenses



or approval shall be furnished to the Bank as and where the transaction submitted to the Bank comprise strategic items or restricted activity;

- (c) The export proceed derived from the export of goods shall be received by the Customer in full and within six (6) months from the date of export. The Customer agrees to be bound by the foreign exchange administration rules issued by Bank Negara Malaysia under the Financial Services Act 2013 or such other legislation as may be amended or supplemented from time to time (“FEA Rules”) and all transactions shall not violate such FEA Rules. Where approval or registration is required with the Bank Negara Malaysia, the Customer undertakes to obtain such approval or complete such registration immediately. A copy of the relevant approval or registration shall be furnished to the Bank as and where the applicable transaction is submitted to the Bank.

14.2 Pursuant to any sanctions now and from time to time imposed by the United States of America, the European Union, the United Nation and/or any other regulatory or supervisory authority or body, the Bank shall not issue, examine, accept, discount or otherwise handle or deal with any documents, shipment, Goods, payment and/or transaction in connection therewith that may relate, whether directly or indirectly, to any sanctioned countries, Persons and/or parties. Accordingly, any presentation that may violate any of the aforesaid sanctions and/or applicable laws giving effect to the same may be rejected at the Bank’s sole discretion without any liability whatsoever on the Bank’s part.

14.3 This Terms and Conditions is applicable to all current and future transactions and shall continue to be valid and binding for all purposes whatsoever notwithstanding the death, bankruptcy, liquidation or any change by amalgamation, reconstruction or otherwise which may be made in the constitution of the Customer or any settlement of account or other matter whatsoever shall in any way affect the Customer’s liabilities and/or obligations created hereunder.

14.4 The rights, remedies, powers and privilege of the Bank under this Agreement are cumulative and are in addition to any other rights, remedies, powers and privilege which the Bank has or may have under the general law and may be exercised as often as the Bank considers appropriate and such rights, remedies, powers and privilege of the Bank shall be capable of being waived or varied only by an express waiver or variation in writing.

14.5 The Customer shall obtain and maintain in full force, validity and effect all governmental and other approvals, authorities, licences and consents required in connection with this Terms and Conditions and shall do or cause to be done all other acts and things necessary or desirable for the performance of all obligations of the Customer pursuant to and as contemplated by this Terms and Conditions.

14.6 The rights, remedies, powers, privilege and discretions given to the Bank are given equally to any of the Bank’s Directors, Officers or Managers, the Bank’s branches, offices, correspondents, nominees and agents and the holders for the time being of any draft or bill as if such Person were in each case specifically name and such rights powers and discretions may be exercised accordingly.

- 14.7 Without the Bank's prior written consent, the Customer shall have no right to assign, transfer or novate any of its rights, obligations or liabilities under this Terms and Conditions and it shall remain fully liable for all its undertakings, agreements, duties, liabilities and obligations under this Terms and Conditions, and for the due and punctual observance and performance thereof.
- 14.8 The Bank may freely assign, transfer and/or novate any of its rights, benefits, interests and obligations under this Terms and Conditions to any bank or financial institution or to a trust fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in advances, financings, securities or other financial assets, without the Customer's consent. The Customer shall execute such documents in form and substance satisfactory to the Bank and do all such acts as the Bank shall require to perfect and complete any such assignment, transfer and/or novation by the Bank. The Customer further agrees that, in connection with any such assignment, transfer and/or novation by the Bank, the Bank may deliver to the prospective buyer, participant or assignee financial statements and other relevant information relating to the Customer without further reference to the Customer.
- 14.9 This Terms and Conditions shall be binding upon and enure for the benefit of the Bank, its successors-in-title, assigns and transferees and the Customer, its successors-in-title, permitted assigns and permitted transferees and any person deriving title from them.
- 14.10 The Customer agrees that the Bank shall not be liable to the Customer or any other person for any costs, losses, liabilities or expenses relating to this Agreement or from any act, default, omission or misconduct of the Bank, in relation to or in connection with this Agreement, and the Customer agrees to release and waive all claims and demands against the Bank arising out of anything which may be done by the Bank hereunder.
- 14.11 No failure to exercise nor any delay in exercising on the part of the Bank of any right, remedy, power or privilege under this Terms and Conditions or under the general law shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 14.12 This Terms and Conditions shall be governed by and construed in accordance with the laws of Malaysia. The courts of Malaysia have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Terms and Conditions (including a dispute regarding the existence, validity or termination of this Agreement) (a "Dispute"). Parties hereto agree that the courts of Malaysia are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary and this clause is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions and the Customer irrevocably consents to the service of process by post or in any other manner permitted by the relevant applicable law.

- 14.13 If at any time any term, condition, stipulation, provision, covenant or undertaking of this Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining terms, conditions, stipulations, provisions, covenants or undertakings nor the legality, validity or enforceability of such terms, conditions, stipulations, provisions, covenants or undertakings under the law of any other jurisdiction will in any way be affected or impaired.
- 14.14 No act or omission by the Bank pursuant to this Terms and Conditions shall affect its rights, powers and remedies hereunder or any further or other exercise of rights powers and remedies.
- 14.15 The entries made in the accounts maintained by the Bank which is signed by the Bank's manager, assistant manager and any other duly authorised officer of the Bank shall, in the absence of manifest error, be conclusive evidence of the matters to which they relate and shall be binding on the Customer. Any certification or determination by the Bank of a rate or amount under this Terms and Conditions, is in the absence of manifest error, conclusive evidence of the matters to which it relates and shall be binding on the Customer.
- 14.16 In the event of any conflict between this Terms and Conditions and the International Rules as are in effect from time to time, this Terms and Conditions shall prevail.
- 14.17 The terms and conditions contained herein shall be subject to the Bank's review from time to time at its absolute discretion.