



中國銀行
BANK OF CHINA

Master Agreement for Trade Services

Version 2/2014

Bank of China Limited

ABN 29 002 979 955

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1 Definitions and interpretation

1.1 In this Agreement, the following definitions apply unless the context indicates otherwise:

- (1) **A\$, Australian Dollars and AUD** means the lawful currency of Australia;
- (2) **Agreement** means the agreement comprised by any one or more of the Facility Letter, each Application by the Customer for the use of a Trade Service and this master agreement for trade services;
- (3) **Application** means an application requesting a Drawing under a Trade Service made by the Customer in the form prescribed by the Bank from time to time;
- (4) **Authorisation** includes any consent, authorisation, registration, filing, lodgment, agreement, notarisation, certificate, permission, Licence, approval, authority or exemption prescribed by Law or required by any Government Agency;
- (5) **Authorised Signatory(ies)** means the person(s) authorised by the Customer to act on its behalf and to give instructions to the Bank in connection with all or any Trade Services, such Authorised Signatory(ies) as are notified to the Bank from time to time in such manner as the Bank requires;
- (6) **Bill** means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth) which is, or is to the subject of a Trade Service under this Agreement and includes a promissory note;
- (7) **Back to Back Credit** means a Credit issued by the Bank for account of the Customer, and documents received under such Credit may be presented, with or without substitution of invoices and possibly other documents supplied by the Customer, to obtain payment under a Master Credit;
- (8) **Bank** means Bank of China Limited ABN 29 002 979 955;
- (9) **BBSW** means in relation to an Interest Period:
 - (a) the rate (expressed as a percentage per annum) that the Bank ascertains is the average mid rate (rounded up, if necessary, to the nearest four decimal places) displayed at or about 11.00 am (Relevant Location time) on the first day of that Interest Period on the Reuters screen BBSW page for a term equivalent or closest to the Interest Period; or
 - (b) if:
 - (i) for any reason there is no rate displayed for a period equivalent to that Interest Period; or
 - (ii) the basis on which that rate is displayed is changed and in the opinion of the Bank that rate ceases to reflect the cost of funding of the Bank to the same extent as previously,then BBSW will be the rate determined by the Bank as its cost of funds on a comparable basis for providing the relevant loan or other funding as applicable;

- (10) **BBSY** means in relation to an Interest Period:
- (a) the rate (expressed as a percentage per annum) that the Bank ascertains is the average bid rate (rounded up, if necessary, to the nearest four decimal places) displayed at or about 11.00 am (Relevant Location time) on the first day of that Interest Period on the Reuters screen BBSY page for a term equivalent or closest to the Interest Period; or
 - (b) if:
 - (i) for any reason there is no rate displayed for a period equivalent to that Interest Period; or
 - (ii) the basis on which that rate is displayed is changed and in the opinion of the Bank that rate ceases to reflect the cost of funding of the Bank to the same extent as previously; then BBSY will be the rate determined by the Bank as its cost of funds on a comparable basis for providing the relevant loan or other funding as applicable;
- (11) **Business Day** means a day that is not a Saturday, Sunday or public or bank holiday in the Relevant Location;
- (12) **Buyer** means the person or persons acceptable to the Bank who buys Goods from the Customer which are subject to a Trade Service and includes any Related Body Corporate of the Buyer;
- (13) **Cleared Funds** means immediately available funds;
- (14) **Collateral Security** means:
- (a) the securities or other documents referred to as Securities in the Facility Letter;
 - (b) any other security or document incidental, collateral or supplementary to any security or documented referred to in clause 1.1(14)(a) above as required by the Bank; and
 - (c) any other document or agreement that grants a Security Interest or any Guarantee in favour of the Bank at any time as security for any Secured Money;
- (15) **Company** has the same meaning as 'corporation' in the Corporations Act;
- (16) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (17) **Cost of Funds Rate** means a rate (expressed as a percentage per annum) determined from time to time by the Bank as its cost of funding the relevant loan amounts or other financial accommodation as applicable;
- (18) **Credit** means a documentary credit issued, transferred, collected, negotiated, financed, or confirmed by the Bank, or issued by a third party bank (**Third Party Bank**) upon the instructions of the Bank, at the request or for the account of the Customer (whether or not the Customer is named as the applicant on such credit) and any commitment by the Bank to issue or confirm, or request for the issue or confirmation of, such credit, and also includes any such credit or commitment as extended or amended from time to time at the request of the Customer;
- (19) **Credit Complying Documents** has the meaning given to that term in clause 11.8(1);

- (20) **Customer** means the Customer as specified in the Facility Letter;
- (21) **Documents** means all Bills, drafts, documentary credits, bills of lading, warrants, delivery orders, wharfingers' or other warehouse keepers' certificates or receipts and all documents of title whatsoever, transportation documents, insurance policies and other documents (including contracts entered into between the Customer and any of its Buyers and insurance in connection with the Goods) relating to goods and/or produce and/or services where such goods and/or produce and/or services and/or documents are the subject of a Trade Service;
- (22) **Drawing** means financial accommodation provided or to be provided to the Customer or Documents issued or to be issued by the Bank for the Customer under or in connection with any Trade Service and **to make a drawing** and similar expressions mean to obtain financial accommodation or the issuance of any Document under or in connection with any of the Trade Services;
- (23) **Event of Default** means any default event referred to in clause 24 (or any other event which is agreed at any time between the Bank and the Customer to be an Event of Default);
- (24) **Exchange Rate** means the prevailing spot rate of exchange for converting one currency into another currency as determined by the Bank from time to time, which determination shall be conclusive and binding on the Customer;
- (25) **Facility Letter** means a letter of offer provided by the Bank to the Customer and accepted by the Customer which relates to the terms and conditions applicable to Trade Services;
- (26) **Financial Statements:**
- (a) of a **Company** means:
- (i) its balance sheet and profit and loss account for each financial year; and
- (ii) any other document that the Corporations Act requires it to prepare.
- (b) The Financial Statements must:
- (i) be certified by a director of the Company as giving a true and fair view of:
- (A) its financial condition as at the end of the financial year; and
- (B) the results of its operations for that financial year; and
- (ii) be prepared in accordance with the Laws of Australia and (except where inconsistent with those Laws) generally accepted accounting principles consistently applied;
- (c) of an **individual**: means a statement of financial position signed by the individual, in a form satisfactory to the Bank, describing his or her present assets and liabilities and setting out an income and expenditure budget for the following year, and

- (d) of a **partnership**: means the partnership accounts, certified by 2 partners as giving a true and fair view of the financial condition of the partnership as at the end of the financial year, together with copies of the partnership income tax return for the previous financial year;
- (27) **Foreign Exchange Facility** means a facility for provision of foreign exchange services as described in clause 17;
- (28) **Front to Back Credit** means a Credit issued by the Bank for account of the Customer, and documents received under such Credit may be presented, with or without substitution of invoices and possibly other documents supplied by the Customer, to obtain payment under a Master Credit which is issued after the Front to Back Credit is issued by the Bank;
- (29) **FX Transaction** means a foreign currency transaction entered into under the Foreign Exchange Facility;
- (30) **Goods** mean the goods, produce, service or any combination of them to which the Documents and the Trade Service relate;
- (31) **Government Agency** means any government or governmental, semi-governmental or judicial entity or authority in any state, country or other jurisdiction, including any self-regulatory organisation established under any Law or any stock exchange;
- (32) **GST** means any goods or services tax, value-added tax, consumption tax or similar tax including as that term is defined in the GST Act;
- (33) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (34) **Guarantee** means any guarantee, indemnity, letter of credit, performance bond, legally binding letter of comfort or suretyship (but does not include a guarantee provided by a subparticipant of the Bank to the Bank);
- (35) **HIBOR** means the rate determined by the Bank on the relevant page of the Reuters Monitor Screen to be the arithmetic mean (rounded up if necessary to the nearest four decimal places) of the rates per annum at which deposits in the relevant currency are offered by leading banks in the Hong Kong interbank market for a period equal or comparable to the relevant Interest Period at or about 11.00 am (Hong Kong time) on the second working day before the first day of such period, or if at or about such time on any relevant day no such rate appears on the relevant page of the Reuters Monitor Screen:
- (a) the rate per annum as determined by the Bank to be the arithmetic mean (rounded up if necessary to the nearest four decimal places) of the rates per annum at which deposits in the relevant currency are offered to the Bank for such period by three prime banks selected by the Bank in the Hong Kong interbank market at or about 11.00 am (Hong Kong time) on the second working day before the first day of such period; or
- (b) if the basis on which that rate is offered is changed and in the opinion of the Bank that rate ceases to reflect the cost of funding of the Bank to the same extent as previously, then HIBOR will be the rate determined by the Bank as its cost of funds on a comparable basis for providing the relevant loan or other funding as applicable;
- (36) **HK\$, Hong Kong Dollars and HKD** means the lawful currency of Hong Kong, Special Administrative Region of the People's Republic of China;

(37) **ICC Rules** means, from time to time, the current Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (**UCP**) and/or the International Chamber of Commerce Rules for Collections (**Collection Rules**), International Chamber of Commerce Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits and/or any other rules or regulations promulgated or published by the International Chamber of Commerce;

(38) **Increased Costs** means:

- (a) a reduction in the rate of return from the Trade Service or on the Bank's (or its Related Body Corporate's) overall capital (including, without limitation, as a result of any reduction in the rate of return on capital as more capital is required to be allocated);
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Transaction Document,

which is incurred or suffered by the Bank or any of its Related Bodies Corporate to the extent that it is attributable to the Bank having entered into its commitment or funding or performing its obligations under any Transaction Document;

(39) **Interest Payment Date** means the Interest Payment Date as specified in the Facility Letter;

(40) **Interest Period** means the period so described in the Facility Letter or if none as determined by the Bank;

(41) **Law** means:

- (a) the applicable law in the Relevant Jurisdiction;
- (b) any law or legal requirement, including at common law, in equity, under any statute, rule, regulation, proclamation, order in council, ordinance, by-law, interim development order, planning scheme or environmental planning scheme whether commonwealth, state, territorial or local;
- (c) any condition of an Authorisation; and
- (d) any decision, rule, ruling, binding order, interpretative decision, directive, guideline, request or requirement of any Government Agency or self regulatory or other authority or organisation, whether or not having the force of law, and if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions in a similar position to the Bank;

(42) **LIBOR** means the rate determined by the Bank on the relevant page of the Reuters Monitor Screen to be the arithmetic mean (rounded up if necessary to the nearest four decimal places) of the rates per annum at which deposits in the relevant currency are offered by leading banks in the London interbank market for a period equal or comparable to the relevant Interest Period at or about 11.00 am (London time) on the second working day before the first day of such period, or if at or about such time on any relevant day no such rate appears on the relevant page of the Reuters Monitor Screen:

- (a) the rate per annum as determined by the Bank to be the arithmetic mean (rounded up if necessary to the nearest four decimal places) of the rates per annum at which deposits in the relevant currency are offered to the

Bank for such period by three prime banks selected by the Bank in the London interbank market at or about 11.00 am (London time) on the second working day before the first day of such period; or

- (b) if the basis on which that rate is offered is changed and in the opinion of the Bank that rate ceases to reflect the cost of funding of the Bank to the same extent as previously, then LIBOR will be the rate determined by the Bank as its cost of funds on a comparable basis for providing the relevant loan or other funding as applicable;
- (43) **Licence** means any notification, permit, licence, registration, authority, consent, quota or approval from a Government Agency required, held or necessary in relation to:
- (a) the Pledged Goods and the Pledged Instruments;
 - (b) the Customer's occupation, acquisition or use of the Pledged Goods and the Pledged Instruments; or
 - (c) any business or other activity carried out, on or in connection with the Pledged Goods and the Pledged Instruments;
- (44) **Liquidation** includes provisional liquidation, administration, receivership, compromise, arrangement, amalgamation, official management, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death;
- (45) **Master Credit** means a Credit against which the Bank issued a Back to Back Credit or in respect of which a Front to Back Credit has been issued by the Bank;
- (46) **Maturity Date** means the maturity date or repayment date for Trade Services as applicable as specified in the Facility Letter;
- (47) **Overdue Interest Rate** means the rate so described in the Facility Letter or, if none, 4% per annum plus the Cost of Funds Rate;
- (48) **Pledged Goods** means all Goods to which the Documents relate which are now or hereafter either in the Bank's possession, or warehoused or stored in the Bank's name or in the name of the Bank's agent or nominee, or received by, deposited or lodged with, transferred to or otherwise held by the Bank or to the order or under the control of the Bank or the Bank's agent or nominee (either directly or indirectly, whether from or by the Customer or any other person, and whether for safe custody, collection, security or for any specific purpose or generally and whether or not in the course of ordinary banking business);
- (49) **Pledged Instruments** means all Documents and other negotiable instruments, notes, deposit receipts, certificates of deposit, bonds or other types of financial instruments which are now or hereafter either in the Bank's possession or received by, deposited or lodged with, transferred to or otherwise held by the Bank or to the order or under the control of the Bank or the Bank's agent or nominee (either directly or indirectly, whether from or by the Customer or any other person, and whether for safe custody, collection, security or for any specific purpose or generally and whether or not in the course of ordinary banking business);
- (50) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (51) **PPSR** has the meaning given to the term 'register' in the PPSA;
- (52) **Related Body Corporate** has the meaning given in the Corporations Act;

- (53) **Relevant Jurisdiction** means the State in Australia of the Relevant Location;
- (54) **Relevant Location** means the location of the office of the Bank entering into this Agreement;
- (55) **Secured Money** means all sums of money, debts and liabilities, whether certain or contingent, whether now or at any time hereafter due, owing or incurred to the Bank from or by the Customer, in whatever currency denominated, whether arising from the Trade Services or otherwise, and whether on any current or other account or otherwise in any manner howsoever (whether as principal or Surety, and whether alone or jointly with any other person, firm or corporation, or from or by any firm in which the Customer may be a partner and in whatever name, style or form), including but not limited to all liabilities in connection with foreign exchange transactions, swap arrangements, issuing, confirming, accepting, endorsing or discounting any notes or bills or under bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Customer, together with interest to date of payment at such rates and upon such terms as may from time to time be agreed, and all commissions, fees and other charges and all legal and other costs and expenses incurred by the Bank (including those of the Bank's nominees and agents) in relation to the Customer or the Pledged Instruments or the Pledged Goods on a full indemnity basis;
- (56) **Security Interest** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement, notice or arrangement having a similar effect, including any 'security interest' as defined in sections 12(1) or (2) of the PPSA;
- (57) **Surety** means a person who has given, gives or is to give a Security Interest in favour of the Bank and includes the person's executors, administrators, successors and transferees;
- (58) **Tax** includes any tax, GST, rate, levy, impost, duty or other charge or withholding of a similar nature (other than a tax on the net overall income of the Bank) and any interest, penalty, fine or expense relating to any of them;
- (59) **Third Party Bank** has the meaning referred to in the definition of 'Credit' above;
- (60) **Trade Service** means any bills or related transactions from time to time entered into between the Bank and the Customer which relate directly or indirectly to the purchase, sale, storage, preparation or shipment of or other dealings in Goods by the Customer or any other third party, or any other transaction between the Bank and the Customer which is made pursuant to or under any type of trade service from time to time granted by the Bank to the Customer, irrespective of whether such transactions are specifically referred to in this Agreement or otherwise. Without limiting the generality of the foregoing, the term **Trade Service** includes (without limitation) the issuance, amendment, confirmation and/or transfer or assignment of the proceeds of a Credit for or upon the request of the Customer, negotiation, purchase, payment, acceptance or endorsement of Documents for the Customer, the issuance of shipping guarantees or indemnities and endorsement of air waybills for or upon the request of the Customer, the grant of packing loans, loans against trust receipts, import loans or other trade loans or other trade-related facilities to the Customer, the handling of documentary collection for both import and export transactions, and any other transactions incidental to or arising from the foregoing transactions;
- (61) **Trade Services Limit** means the amount set out in the Facility Letter as the maximum amount which may be utilised by the Customer in connection with a Trade Service specified in the Facility Letter;

- (62) **Transaction Documents** means:
- (a) this Agreement;
 - (b) the Documents and Pledged Instruments;
 - (c) any Collateral Security; and
 - (d) any document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above;
 - (e) a financing statement or financing change statement;
 - (f) any agreement relating to the priority of any Security Interest that is a Collateral Security;
 - (g) any other document that the Bank and the Customer agree is a Transaction Document,
 - (h) and any agreement or instrument created under any of them;
- (63) **Trust** means any trust of which the Customer or a Surety is a trustee including as notified to the Bank under clause 22.1(4);
- (64) **Trust Deed** means the deed of trust or settlement under which a Trust is established;
- (65) **US\$, United States Dollars** and **USD** means the lawful currency of the United States of America; and
- (66) **Variable Bank of China Interest Rate** means the interest rate from time to time determined by the Bank for the relevant loan or other funding provided to the Customer in the relevant currency being initially the percentage per annum rate set out in the Facility Letter (or if not specified in the Facility Letter as notified in writing to the Customer) and as may be varied by increase or decrease at the discretion of the Bank by notice in writing to the Customer specifying the varied rate of interest and if applicable the date from which it takes effect.

- 1.2 The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply:
- (1) Unless the context otherwise requires, words and expressions used in this Agreement have the meaning assigned to them in:
 - (a) the Facility Letter; and
 - (b) this Agreement,
 - (2) and if there is any inconsistency between the provisions of the Facility Letter and these terms and conditions, the provisions of the Facility Letter prevail to the extent of the inconsistency.
 - (3) In this Agreement, unless the context indicates otherwise, reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;

- (c) a person includes a natural person, firm, unincorporated association, corporation, partnership, joint venture and a government or statutory body or authority;
 - (d) a party to this document or another agreement or document includes the party's executors, administrators, successors and permitted substitutes (including persons taking by novation) or permitted assigns;
 - (e) a Law includes:
 - (i) that Law as amended or re enacted;
 - (ii) a statute, regulation or provision enacted in replacement of that Law;
 - (iii) another regulation or other statutory instrument made or issued under that Law; and
 - (iv) any amendment made to a statute, regulation or provision as a consequence of another statute, regulation or provision;
 - (f) this Agreement includes any schedule or annexure to it;
 - (g) a thing (including any amount) is a reference to the whole and each part of it;
 - (h) a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Agreement;
 - (i) an agreement or document is to the agreement or document as amended, novated, supplemented or replaced, except to the extent prohibited by this Agreement;
 - (j) conduct includes an omission, statement or undertaking, whether or not in writing;
 - (k) 'property' or 'asset' includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;
 - (l) an amount for which a person is contingently liable includes an amount which that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability will actually arise;
 - (m) a right includes a benefit, remedy, discretion, authority and power;
 - (n) an obligation includes any warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (o) payment includes repayment, discharge or satisfaction; and
 - (p) know your customer checks means any know your customer obligations or other identification requirements, checks or procedures in connection with any Law.
- (4) A reference to costs and expenses in this document includes legal costs and expenses on a full indemnity basis.

- (5) Anything that this document states is to be done by either the Bank or another party is to be done at the Customer's expense.
- (6) 'Including' and similar expressions are not words of limitation.
- (7) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (8) Headings and any table of contents or index are for convenience only and do not form part of this document or affect its interpretation.
- (9) A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the document.
- (10) An Event of Default subsists or continues until it has been waived in writing by the Bank or remedied to the Bank's satisfaction.
- (11) The interpretation of any one Event of Default will not be restricted by reference to or inference from any other Event of Default.
- (12) Where the Customer has agreed in this Agreement to procure another party to do or not do any act or thing, failure by the Customer to so procure will constitute non compliance with and a breach of the Customer's obligations under this document despite that it may have been beyond the Customer's power or control to so procure.
- (13) whenever the word 'negotiate' is used in respect of any Documents, it means either the purchase or discount of the relevant Documents, or the advancing money against the relevant Documents, by the person who negotiates them.
- (14) A Security Interest in favour of the Bank includes a Security Interest given to the Bank previously or to be given to the Bank in the future as security for the Customer's obligations (whether under this Agreement or not).

1.3 Where a party comprises 2 or more persons:

- (1) a reference to that party is a reference to each of them severally as well as every 2 or more of them jointly; and
- (2) an agreement or obligation binding on that party binds those persons jointly and severally.

1.4 The Customer executing the Facility Letter remains fully liable for its obligations whether or not another party executes this Agreement or whether or not this Agreement is not enforceable against another party.

2 Application of this Agreement

2.1 If the Customer wants to use any Trade Service covered by this Agreement it shall sign and deliver to the Bank the Bank's current Application for that Trade Service.

2.2 Unless agreed by the Bank in writing to the contrary, the Trade Services now or hereafter at any time and from time to time entered or to be entered between the Customer and the Bank shall be subject to this Agreement. This Agreement must be read in conjunction with:

- (1) any agreement between the Bank and the Customer; and

(2) any other terms and conditions provided by the Bank to the Customer relevant to any Trade Service in respect of which this Agreement applies,

(3) **(Other Terms)**.

2.3 If the provisions of this Agreement are inconsistent with any Other Terms, then:

(1) where the relevant Other Terms state that they prevail to the extent of the inconsistency, they shall so prevail over the provisions of this Agreement; and

(2) otherwise, the provisions of this Agreement prevail to the extent of the inconsistency.

2.4 For the purpose of this clause, an 'inconsistency' does not exist only by reason that a term of one document relating to a particular topic is more comprehensive than the term of the other document relating to that topic. In such a case, the more comprehensive term shall apply.

2.5 In respect of any Trade Service effected or to be effected by the Bank:

(1) the Trade Service is subject to the applicable ICC Rules current at the time the Trade Service is effected as determined and specified by the Bank; and

(2) if there is any conflict between any provisions of this Agreement and any ICC Rules which are applicable to such a Trade Service, the provisions of this Agreement shall prevail.

3 Provision of Trade Services

3.1 The Bank agrees to provide the Customer with the Trade Services in accordance with this Agreement. The Bank agrees to do this in exchange for the Customer carrying out its obligations under this Agreement.

3.2 The Customer acknowledges that different Trade Services may be provided for different agreed terms.

4 Conditions precedent

4.1 The Bank is only obliged to make a Trade Service available to the Customer or allow the Customer to use a Trade Service, from time to time, if the Bank is satisfied that:

(1) **execution:** the Customer has properly executed and accepted all the relevant components of this Agreement;

(2) **default:** no default under this Agreement, or any other default (however defined) under any other agreement, undertaking or instrument to which the Customer is a party or is binding on the Customer, has occurred and is continuing;

(3) **Trade Service Limit:**

(a) the amount outstanding under each Trade Service at any time will not exceed the Trade Service Limit for that Trade Service; and

(b) the total amount outstanding at any time will not exceed the aggregate of all Trade Service Limits for all Trade Services;

- (4) **Securities:** if applicable, the Bank has received the securities described in the Facility Letter, properly completed and executed and legally enforceable (and, if a security is registrable, in registrable form), as well as all other documents needed to perfect the securities. If a Surety is a company, or acts as a trustee, the Bank may also require some of the documents set out in clauses 4.1(5) and 4.1(6) in respect of the Surety;
- (5) **Companies:** if the Customer is a company the Bank has received a copy of the Customer's certificate of incorporation; together with evidence satisfactory to the Bank from one of the Customer's directors, or from the Customer's secretary, that each of these documents is complete, correct, fully in force and not subject to amendment or revocation;
- (6) **trusts:** if the Customer is making this Agreement as a trustee of a trust, the Bank have received a copy of the trust deed together with evidence satisfactory to the Bank from the Customer or, if the Customer is a company, from one of the Customer's directors or from the Customer's secretary, that the trust deed is complete, correct, fully in force and not subject to amendment or revocation;
- (7) **fees:** it has received all of its interest, fees, commissions, charges, costs and expenses incurred by it in establishing and providing the Trade Service to the Customer; and
- (8) **additional conditions:** the Customer has complied with all additional conditions precedent in relation to the Trade Service or as otherwise set out in the Facility Letter (if any).

4.2 If the Customer has already given the Bank the documents referred to in clauses 4.1(5) and 4.1(6) and they remain complete, correct, fully in force and not subject to amendment or revocation, the Bank only requires evidence from one of the Customer's directors or company secretary, of those facts.

5 Indemnity

- 5.1 Notwithstanding anything herein to the contrary, the Customer shall indemnify the Bank and hold the Bank harmless on a full indemnity basis from and against all liabilities, obligations, claims, demands, actions, proceedings, damages, costs, losses, expenses and other sums (whether actual or contingent) which the Bank may incur or pay by reason of or in connection with this Agreement (including without limitation those incurred by reason of the exercise of any power or discretion by the Bank hereunder or as a result of a request by the Customer to make or initiate a request or demand under the PPSA) or any Trade Services entered into between the Bank and the Customer, including all liabilities (whether actual or contingent) which the Bank may incur to any person (including any Third Party Banks, the Bank's nominees, correspondents or agents) with whom the Bank may have dealings as a result of or otherwise in connection with the Trade Services and all costs and expenses (including legal costs and Tax) which the Bank, any Third Party Banks or the Bank's nominees, correspondents or agents may incur in relation to the Trade Services and/or Goods covered by or relating to such Trade Services, and the Customer further undertakes to provide the Bank on demand with funds to meet or cover its indemnity obligation hereunder, irrespective of whether the Bank has made actual payments or is only under a potential obligation to make payments.
- 5.2 The indemnities under this Agreement are the Customer's continuing obligations, separate and independent from the Customer's other obligations and survive the termination or completion of any Trade Service and this Agreement.

6 Fees, charges, interest and maturity date

6.1 Customer to pay

The Customer shall pay the Bank all fees, charges, interest, margins and/or commissions as the Bank shall from time to time determine absolutely in respect of the Trade Services.

6.2 Details of interest and fees

The Customer may obtain details of the current interest rates and applicable margins, fees, charges and commissions for Trade Services from the Bank upon request.

6.3 New fees

The Bank may introduce new fees, charges or commissions for Trade Services. Any new fee, charge or commission shall be notified to the Customer in writing no later than 30 days before the change takes effect.

6.4 Change fees

The Bank may also change existing fees, charges and commissions as well as when, how often and how the Customer shall pay them. Any change shall be notified to the Customer no later than the day on which the change takes effect by an advertisement in a major or national daily newspaper or notice shall be given to the Customer in writing.

6.5 Calculation of interest

The following provisions apply in relation to any loan or other funding provided by the Bank to the Customer in relation to Trade Services subject to any other terms or conditions specified in the Facility Letter:

- (1) interest accrues daily at the interest rate specified in the Facility Letter and is payable on each Interest Payment Date specified in the Facility Letter or if none is specified as determined by the Bank.
- (2) interest will be calculated on the actual days elapsed based on a 365 day year for A\$ or HK\$ or 360 day year for US\$ (or for other currencies as applicable, as determined by the Bank based on the number of days in the year for calculation of interest for the relevant currency according to the custom and practice of reputable international banks).
- (3) an Interest Period which would otherwise end after the Maturity Date ends on that date.
- (4) an Interest Period that would otherwise end on a day that is not a Business Day is a period ending on the succeeding Business Day.

6.6 Accrual of interest

- (1) Interest accrues on each unpaid amount that is due and payable by the Customer:
 - (a) daily up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
 - (b) both before and after judgment (as a separate and independent obligation); and

- (c) at the rate specified as the Overdue Interest Rate in an amount equivalent to each unpaid amount.
- (2) The Customer must pay interest accrued under this clause 6.6 on demand by the Bank.
- (3) Interest payable under this clause 6.6 which is not paid may be capitalised by the Bank at intervals which the Bank determines from time to time. Interest is payable on capitalised interest at the Overdue Interest Rate and the Customer's obligation to pay that interest is not affected by its capitalisation.

6.7 Repayment of Secured Money

The Customer must repay or satisfy in full all Secured Money applicable to a Trade Service on the Maturity Date or earlier date on which pursuant to the Facility Letter the bank may require payment on demand.

7 Credits for inward trade

- 7.1 Each Credit shall be in such form and subject to terms and conditions in addition to the applicable ICC Rules as the Bank may prescribe or impose at the time of opening or establishing the relevant Credit.
- 7.2 The Customer warrants and represents to the Bank that all and any Applications to the Bank for the issue of any Credit are made for the purpose of facilitating the acquisition of the Goods as described under the Credit, and for no other purpose.
- 7.3 The Bank is authorised to accept and/or pay all Documents made or purporting to be made under any Credit and to pay all sums which appear or purport to be claimed or demanded under such Credit or which the Bank, in its sole opinion, is liable to pay in accordance with or pursuant to such Credit, without any reference to or further authority from the Customer. The Bank has the sole and unfettered discretion to determine whether documents presented under a Credit are compliant with the terms thereof and such determination shall be binding on the Customer unless there is gross negligence or wilful default on the part of the Bank.
- 7.4 The Customer shall, as applicable, accept and pay all Documents presented, or accept upon presentation and pay at maturity all Documents made in accordance with the terms of any Credit, and shall provide the Bank with the necessary funds upon demand, but in any event not later than the maturity date of the applicable Document, to pay the amount due in accordance with the terms of any Credit.
- 7.5 The Customer agrees:
 - (1) that the Bank does not warrant or represent to the Customer as to the enforceability or effectiveness of any terms or requirements incorporated in any Credit nor shall the Bank have any duty to ascertain the enforceability or effectiveness of such terms and requirements and give the Customer an opinion thereon before incorporating them in any Credit, and
 - (2) that the Bank shall have no duty whatever to inform the Customer of the existence of all or any uncertainty or ambiguity in the Customer's instructions in relation to any Credit notwithstanding that without the Bank's notification, the Customer may not be aware of such uncertainty or ambiguity.
- 7.6 Any action taken or omitted by the Bank or by any of its correspondents or agents under or in connection with any Credit, if taken or omitted by the Bank or them in good faith, shall be

binding on the Customer and shall not place the Bank or its correspondents or agents under any liability to the Customer.

- 7.7 The Customer acknowledges that the Bank is not obliged to notify the Customer or to seek the Customer's waiver of any discrepancies before refusing the Documents on a discrepancy. The Customer further acknowledges that any decision by the Bank to seek a waiver at any time does not oblige the Bank to seek a waiver at any other time in respect of any other discrepancies. Without limiting the foregoing, if the Bank notifies the Customer of a discrepancy in the Documents and the Customer requests the Bank and/or its agents or correspondents to:
- (1) comply with its payment obligations under the Credit, notwithstanding the discrepancy; or
 - (2) countersign or issue any guarantee or indemnity covering those discrepancies,
- the Customer must comply with the Customer's payment obligations notwithstanding the discrepancy.
- 7.8 The Customer expressly agrees and acknowledges that the rights of the Bank under this Agreement (in particular, but without limitation, the right of indemnity and payment under clause 5) shall not be affected or prejudiced if the Bank or any Third Party Bank (as the case may be) is prevented or estopped from raising any discrepancies in any Documents presented under any Credit by reason of the Bank or the Third Party Bank failing to raise similar discrepancies in its past course of dealing or otherwise arising out of the exercise by the Bank of its powers under clause 7.9.
- 7.9 If the Credit terms stipulate that certain specific Documents required by the Customer, including title documents, be forwarded by the beneficiary direct to the Customer at or prior to the time the beneficiary makes any claim under such Credit, all remaining Documents (which must include at least one negotiable copy of the title documents) relating to such Credit must be produced to the Bank in respect of any claim under such Credit. If the Customer uses the Documents forwarded directly to the Customer to obtain possession of the Goods then the Customer must accept all Documents presented and pay or accept upon presentation and pay at maturity all drafts or Bills drawn in respect of the Goods, notwithstanding any discrepancy or any other matter or thing that might otherwise have relieved or affected the Customer's obligations.
- 7.10 The Bank shall not be bound at any time to release any Documents or Goods to the Customer unless the Customer has fully discharged the Customer's obligations and liabilities to the Bank in respect of any Credit.
- 7.11 The Bank and its correspondents, nominees, service providers or agents related to the Credit are not responsible:
- (1) for any detention of the Goods;
 - (2) for the shippers' charges on the Goods; or
 - (3) for any variations in the instructions agreed to by the Bank or any of its correspondents, nominees, service providers or agents related to the Credit necessitated by the Law and/or commercial practice of the country in which any bill or draft is negotiated or presented for acceptance or for payment.
- 7.12 The Customer acknowledges that the Bank may disclose information about the Customer to any person making a claim under the Credit.

8 Back to Back Credit and Front to Back Credit

- 8.1 The Bank shall have no duty to ensure that a Back to Back Credit contains terms and requirements matching or compatible with the Master Credit concerned, nor shall the Bank be obliged to notify the Customer of any such mismatch or incompatibility in or between the Back to Back Credit and the related Master Credit before any Back to Back Credit is issued for account of the Customer.
- 8.2 The Customer acknowledges that a Front to Back Credit is issued before the Master Credit is issued and it is the Customer's responsibility to ensure that Master Credit is compatible with and, for all practicable purposes, matches to the Front to Back Credit and is delivered to the Bank within a period which is acceptable to the Bank. Prior to the receipt of the Master Credit by the Bank, the Customer must pay 100% of the bill proceeds to the Bank as margin deposit or for payment when the shipment documents drawn under the Front to Back Credit are received by the Bank.
- 8.3 The Back to Back Credit and the Front to Back Credit, once issued, shall be regarded as a separate and independent Credit and the liabilities of the Customer toward the Bank in relation to any Back to Back Credit or any Front to Back Credit shall not be dependent upon whether payment can or cannot be obtained under the related Master Credit and that the payment by the Bank under any Back to Back Credit or Front to Back Credit shall not constitute any warranty or representation on the part of the Bank that the Documents received by the Bank under the Back to Back Credit or the Front to Back Credit, with or without the substitution of invoices and possibly other documents supplied by the Customer, are sufficient to form a set of fully compliant Documents for the purpose of obtaining payment under the related Master Credit.
- 8.4 The Customer authorises the Bank (but the Bank shall have no obligation) to execute, sign and/or complete any document, instrument or otherwise, and to do any acts and things whatsoever which may, in Bank's sole and absolute opinion, be necessary for the presentation of the Documents under the Master Credit including but not limited to the preparation, dating, signing of any relevant Documents in order to give effect to the provisions of clauses 8.5 and 8.6.
- 8.5 The Customer irrevocably appoints the Bank to be its collecting bank regarding all and any Master Credits with the right to the Bank to negotiate the Master Credits in accordance with the term hereof if the Bank deems fit.
- 8.6 Notwithstanding anything herein contained, if the Documents have duly been accepted by the issuing bank or confirming bank of any Master Credit as in compliance with the terms thereof, the Bank shall have the irrevocable authorisation (but shall not be obliged):
- (1) to accept and effect payment against the Documents presented under the corresponding Back to Back Credit or Front to Back Credit as if they are in full compliance with the terms thereof (although they may not be so and/or discrepancies may have been raised), without prior reference or notice to the Customer; and
 - (2) upon receipt of the proceeds under the Master Credit, to apply the same or part thereof to discharge the Customer's obligations and liabilities (actual or contingent) in respect of such Back to Back Credit or Front to Back Credits or any other Secured Money as the Bank may think fit.
- 8.7 If the Bank issues a Back to Back Credit or a Front to Back Credit against the Master Credit deposited or to be deposited by the Customer with the Bank, when the Back to Back Credit is issued or, in the case of a Front to Back Credit, immediately the Master Credit is issued, the Customer absolutely assigns all its rights, title, interests and benefits in and to all the proceeds of the Master Credit as continuing security for the payment and discharge of the Customer's obligations and liabilities to the Bank. All monies received by the Bank in

respect of the Master Credit shall be applied to discharge the obligations and liabilities of the Customer in such order and manner as the Bank determines.

- 8.8 The Customer undertakes that the Customer shall not assign the proceeds of all or any Master Credits to any party (other than the Bank) without the prior written consent of the Bank.
- 8.9 The Customer shall not accept or reject any amendment to any Master Credit without the prior consent of the Bank. If the Customer shall have received any amendment issued in respect of any Master Credit, the Customer shall notify the Bank immediately.

9 Shipping guarantees and endorsement of air waybills

- 9.1 If the Bank, at the request of the Customer, countersigns or issues any letter of indemnity or guarantee to shipping companies or forwarding agents to enable the Customer or its nominated person to take delivery of any Goods (to which the Customer claims to be entitled) without production of the relevant bill(s) of lading or other document(s) of title, or to endorse or countersign any air waybills, godown warrants, switch bills of lading or documents of like nature to enable the Customer to collect any Goods (to which the Customer claims to be entitled), the Customer agrees that the following terms shall apply:
- (1) the Customer shall accept and pay, or accept upon presentation and pay at maturity, all Documents made or drawn in connection with such Goods, notwithstanding any discrepancy therein or dispute between the Customer and the seller of the Goods or otherwise;
 - (2) until the cancellation of the relevant letter of guarantee or indemnity and until the due payment by the Customer of all amounts due under the Documents made or drawn in connection with such Goods, the relevant bill(s) of lading and/or other document(s) of title if made out to the Customer or to its order shall be held by the Customer upon trust for the benefit of the Bank and the Customer shall forthwith endorse and deliver the same to the Bank so as to enable the Bank to produce the same to the relevant party to procure the release of the Bank's liability from the letter of indemnity or guarantee and the return of the relevant letter of indemnity or guarantee to the Bank for cancellation.
 - (3) the Customer shall use its best endeavours to obtain the bill(s) of lading or other document(s) of title to such Goods for the benefit of the Bank as mentioned in clause 9.1(2);
 - (4) the Customer indemnifies the Bank against and must pay to the Bank on demand, the amount of all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis and Tax) incurred or to be incurred by the Bank in connection with or arising out of the missing bill(s) of lading or other document(s) of title and the guarantee or indemnity issued by the Bank, or the endorsement or countersigning of any air waybills, godown warrants, switch bills of lading or documents of like nature; and
 - (5) the issuance of such letter of indemnity or guarantee and/or the endorsement or countersigning of such air waybills shall be subject to such other terms and conditions as the Bank and the Customer may deem fit, and without prejudice to the foregoing, the Customer shall pay the Bank a commission at such rate as may from time to time be charged by the Bank during the continuance of such letter of indemnity or guarantee.
- 9.2 For the avoidance of doubt, if the Bank issues a guarantee or indemnity in respect of Goods the subject of an inward trade Credit, clause 14.1 shall apply.

10 Collections inward/outward trade

- 10.1 If the Bank agrees to act on an Application of the Customer to send documents for collection, the Bank shall act in accordance with the instructions included in that Application.
- 10.2 The Bank does not have to pay the Customer until the proceeds of collection have actually been received by the Bank. In addition and without prejudice to any other rights of the Bank under this Agreement or any other agreement, the Customer irrevocably and unconditionally authorises the Bank to apply the proceeds of collection or any part thereof to discharge the Secured Money in such manner as the Bank may deem fit.
- 10.3 Where the collection is to be made under a Credit, the Bank shall have no duty whatsoever to examine and see whether the Documents received from the Customer meet the requirements of the relevant Credit. If the Bank accepts the Customer's request to check the Documents, the Bank shall only check them on a 'no responsibility' basis notwithstanding payment of a fee to the Bank for doing so by the Customer. The Customer expressly acknowledges and agrees not to hold the Bank liable in any manner whatsoever, whether in contract or in tort, if the Documents checked by the Bank do not meet the requirements of the relevant documentary credit.
- 10.4 The Bank shall not be liable for, and the Customer indemnifies the Bank against, any losses, damages, claims, demands, suits or proceedings that may be brought due to any act, omission or default on the part of any collecting bank, settlement bank, or other bank used in the collection service by the Customer as their agent or resulting from the Customer selecting an incorrect collecting bank, settlement bank, or other bank as their agent.
- 10.5 The Bank accepts no responsibility for any act, omission or default on the part of any collection bank selected by the Customer or recommended by the Bank.
- 10.6 The Bank may from time to time represent other banks as at their correspondent bank and present to the Customer documents against acceptance (**D/A**) or documents against payment (**D/P**) for collection. If the Bank makes any advance or grants any import loan to the Customer to finance payment of any D/A or D/P presented to the Customer for collection by the Bank or otherwise, the Customer indemnifies the Bank in accordance with the terms set out in clause 5 and shall cause the relevant D/A or D/P, and if required by the Bank, the Goods represented thereof, to be delivered to and deposited with the Bank. Such D/A, D/P or Goods shall form part of the Pledged Goods or the Pledged Instruments, as the case may be.
- 10.7 If the Bank receives collection proceeds from any bank or other party which is not final and the Bank is subsequently required to repay such bank or party the proceeds or any part thereof, the Customer indemnifies the Bank in accordance with the terms set out in clause 5.

11 Documents made in outward trade

- 11.1 Upon Application by the Customer, the Bank may, if it accepts that Application negotiate any Documents for the Customer. The Application must be accompanied by all the Documents required to be presented under the outward trade Credit.
- 11.2 Unless expressly agreed in writing to the contrary, the Bank shall have full recourse to the Customer in respect of any or all of the Documents negotiated by the Bank.
- 11.3 The Customer warrants and represents to the Bank that all Documents delivered or to be delivered to the Bank for negotiation purpose relate to sale of the Goods as described in those documents and the Customer has shipped or delivered the Goods to the buyer.

- 11.4 The Customer shall provide the Bank with the necessary funds on demand, but in any event not later than the maturity date of the relevant Document:
- (1) to reimburse the Bank for all advances or payments made against any Documents negotiated by the Bank for the Customer which may be dishonoured or not duly taken up on presentation for acceptance or which may not be paid at the maturity date thereof according to the original tenor thereof or otherwise, and non-payment of or against any Documents shall be deemed to have occurred if, at that date, funds have not been placed at the Bank's free disposal for the whole sum due; and
 - (2) to pay the Bank, together with the reimbursement as mentioned in clause 11.4(1), interest thereon to date of payment at such rate and upon such terms as may from time to time be agreed as well as commission, fees and other charges.
- 11.5 Nothing done or omitted to be done by the Bank in respect of any Documents negotiated by the Bank after their being dishonoured for payment or acceptance or not duly taken up on presentation shall in any way prejudice the Bank's right of full recourse to the Customer.
- 11.6 If the Bank or its correspondent, nominee, service provider or agent notifies the Customer of certain discrepancies or irregularities in or concerning the Documents presented for negotiation and the Customer provides instructions to the Bank or its correspondent, nominee, service provider or agent to negotiate or handle the Customer's Documents under the outward trade Credit notwithstanding the discrepancies, the Customer agrees that if the Documents should be dishonoured or the Bank's claim under the outward trade Credit not be honoured, the Customer shall repay the Bank on demand:
- (1) the amount due or claimed under the Documents;
 - (2) interest on that amount at the Bank's current interest rate and applicable margin from time to time for that currency, calculated from the date the Documents were negotiated until the date of repayment in full to the Bank; and
 - (3) all charges incurred by the Bank or its correspondent, nominee, service provider or agent,
- and the Customer indemnifies the Bank and its correspondent, nominee, service provider or agent on demand against all damages, losses, costs and expenses whatsoever which the Bank or its correspondent, nominee, service provider or agent may incur or be liable for as a result of negotiating or handling Documents which are discrepant or irregular.
- 11.7 The Bank is authorised, upon such conditions as the Bank thinks fit, in relation to any Documents delivered by the Customer to the Bank, whether for safe custody, collection, security or for any specific purpose or generally and whether such Documents have been negotiated by the Bank or otherwise:
- (1) to take conditional acceptance thereof (including acceptances for honour) and/or to extend the due date for payment thereof;
 - (2) to accept payment from the drawees or acceptors before maturity under rebate or discount;
 - (3) to accept part payment before maturity and to deliver a proportionate part of the Goods covered by the Documents to the drawees or acceptors of the Documents or the consignees of such Goods;
 - (4) at the request of the drawee, to delay presentation of the Bill or draft for payment or acceptance without affecting the Customer's liability to the Bank in respect of such Bill or draft; and

- (5) to institute proceedings and to take steps for recovery from any acceptor or endorser of the Bill or draft or any amount due in respect of such Bill or draft, despite the Bank having debited the Customer's account with the amount of such Bill or draft.
- 11.8 Upon Application by the Customer, the Bank may, if it accepts that Application confirm an outward trade Credit on the following terms:
- (1) Subject to the following clauses, upon receipt of Documents, in the opinion of the Bank, strictly complying with the terms of the Credit (**Credit Complying Documents**), the Bank shall:
- (a) assume the risk that the issuing bank will reject the Credit Complying Documents or delay payment under the Credit; and
- (b) either:
- (i) discount the Credit Complying Documents within 48 hours of receipt at the counters of the Bank at an interest rate and margin determined by the Bank; or
- (ii) despatch the Credit Complying Documents to the issuing bank within 48 hours of receipt at the counters of the Bank and:
- (A) if the issuing bank fails to pay the Credit on its maturity date and providing that documents are received at the counters of the Bank at least 14 Business Days prior to the maturity date of the Credit, the Bank shall effect payment to the beneficiary on the maturity date of the Credit in accordance with the Credit terms; or
- (B) if documents are not received at the counters of the Bank 14 Business Days prior to the maturity date of the Credit, the Bank shall effect payment upon receipt of funds from the issuing bank and, in any event, not later than 14 Business Days after dispatch of the Credit Complying Documents at the counters of the Bank, whichever date is the sooner.
- (2) The amount payable to the Customer or discounted by the Bank under clause 11.8(1) will be the lesser of the face value of the Credit or the value of the Credit Complying Documents.
- (3) The fees and commissions payable by the Customer to the Bank for confirming the Credit shall be as determined by the Bank, accrue from day to day from a date which may be determined by the Bank but in any event not being earlier than the date the Bank accepts the Application of the Customer to the maturity date of the Credit and are payable, at the Bank's election, on the earlier of presentation of the Credit Complying Documents or the maturity date of the Credit.
- (4) If the Credit expires without the Documents called for under the Credit being presented to the Bank by the Customer, the Bank's fees and commissions shall be payable by the Customer upon such expiry date.
- (5) If the Credit is amended without the Bank's written consent the Bank will not be bound by the confirmation. The Bank's consent will not be unreasonably withheld or delayed. If the amendment to which the Bank agrees increases the value or extends the validity of the Bank's existing commitment the Customer must pay the Bank a further fee or commission calculated on such increase or extension.

- (6) The Customer:
- (a) will not do any act or refrain from doing any act if to do so may waive, vary or diminish in any way the Bank's rights, title, interest or benefit in, and claims for payment under, the Credit and all related Credit Complying Documents, Goods and insurances; and
 - (b) has not and shall not assign, encumber or otherwise deal with any of its rights, title, interest or benefit under the Credit and any related Credit Complying Documents, Goods and insurances, or in the proceeds thereof, to any person other than to the Bank and there is no restriction on the Customer doing so.
- (7) In consideration of, and upon the Bank's confirmation being added to the Credit, the Customer irrevocably assigns to the Bank absolutely all its rights, title, interest and benefit in, and claims for payment, under the Credit and all related Credit Complying Documents, Goods and insurances and, if requested, the Customer agrees to:
- (a) take all action and execute any documents required by the Bank to perfect any assignment to the Bank of all its rights, title, interest and benefit in, and claims for payment under the Credit and all related Credit Complying Documents, Goods and insurances; and
 - (b) take all steps and provide all assistance as the Bank may reasonably request (including initiating and continuing legal action in any Court or jurisdiction) in connection with any claim by the Bank against any party in respect of the Credit and any related Credit Complying Documents, Goods and insurances.
- (8) The Customer agrees that that if any right, title or interest of the Customer in, and claims for payment, under the Credit and any related Documents, Goods and insurances is not effectively assigned to the Bank then the Customer declares that until such date as the remaining right, title and interest is effectively assigned and transferred to the Bank, the Customer will hold the remaining right, title and interest on trust for the sole benefit of the Bank.
- (9) the Customer shall notify the Bank in writing of any dispute between the Customer and its buyer, or if the Customer has reason or ought to have reason to consider that any act or thing described in clause 35 is, has occurred or is likely to occur.
- (10) The Customer's rights under the confirmation cannot be assigned, encumbered or otherwise dealt with by the Customer without the prior written consent of the Bank.
- 11.9 The Customer may make an Application to the Bank for the transfer of an outward trade Credit. If the Bank approves such an Application the Bank shall issue a transfer (**Transfer**) under the outward trade Credit on the terms set out in the Application and otherwise specified by the Bank for a particular Transfer.
- 11.10 The Customer may make an Application to the Bank for the Bank to issue an assignment of proceeds (**Assignment**) under an outward trade Credit. If the Bank approves such an Application the following terms apply:
- (1) an Assignment instruction issued by the Customer is an irrevocable and unconditional instruction as to assign of all or part of (as notified in the Assignment) the proceeds of an outward trade Credit;
 - (2) all Assignment instructions are irrevocable unless the payee of the Assignment (**Payee**) gives written authority to cancel it, and the Payee may request alternative

disbursement arrangements. The Bank undertakes not to assign any further rights to the proceeds under the outward trade Credit, nor issue additional instructions for payment thereof;

- (3) all Assignments shall only occur if compliant documentation is presented under the outward trade Credit and the subsequent reimbursement claim is honoured by the issuing bank of the outward trade Credit;
- (4) the Customer acknowledges that the Bank will only act upon the Customer's instructions to assign proceeds of a successful negotiation to the Payee and is not being asked to add the Bank's commitment, either actual or implied, to the arrangements entered into between the Payee and the Customer which have resulted in the issuance of the Assignment;
- (5) the Customer further acknowledges that if a 'with recourse' drawing is subsequently not met by the issuing/reimbursing bank for any reason, the Customer remains responsible to reimburse the Bank for all amounts paid under the Assignment;
- (6) the Customer represents that they have the power to make Assignments under the outward trade Credit(s) and to the best of their knowledge that no payment under the Assignment(s) could be avoided by Law or will be encumbered or subject to any other claims; and
- (7) the Customer acknowledges that the Bank will rely on the Customer's representations and the information contained in all Assignment instructions delivered to the Bank (in written or electronic form) and that the Bank will make no further or independent enquiries into such matters.

12 Trade finance

12.1 The Customer may make an Application to the Bank for a trade loan to finance its obligation to reimburse the Bank for payment made under an inward trade Credit. If the Bank approves such an Application, the Customer has executed any other documents the Bank requires and complied with the terms of that documentation funds shall be credited to an account specified by the Customer.

12.2 The Customer may make an Application to the Bank for a trade loan:

- (1) against Documents sent on collection by the Bank for the Customer; or
- (2) to finance payment of any D/A or D/P presented to the Customer for collection by the Bank as a representative of its correspondent bank,

and if the Bank approves such an Application, the Customer has executed any other documents the Bank requires and complied with the terms of that documentation funds shall be credit to an account specified by the Customer.

12.3 The Customer may make an Application to the Bank to negotiate a Credit, Bill or draft. If the Bank approves such an Application, the Bank retains all its rights of recourse to the Customer on the Credit, Bill, draft or Document(s). If the Customer has executed any other documents the Bank requires and complied with the terms of that documentation the Bank, at the request of the Customer, shall either:

- (1) negotiate and credit proceeds immediately to account(s) specified by the Customer; or

- (2) negotiate and credit proceeds to account(s) specified when payment is received from the issuing/reimbursing bank.
- 12.4 The Customer may make an Application to the Bank for a packing trade loan to finance all or a portion of the price the Customer is required to pay to its supplier to purchase materials or services in order to prepare, manufacture, assemble or otherwise produce Goods for export, as evidenced by an invoice from the Customer's supplier against outward trade Credits from the Customer's buyers of those Goods which are in terms satisfactory to the Bank and the proceeds of which have been assigned to the Bank. If the Bank approves such an Application, the Customer has executed any other documents the Bank requires and complied with the terms of that documentation funds shall be disbursed in accordance with that documentation.
- 12.5 The Customer may make an Application to the Bank for a trade loan to finance its other trade commitments. If the Bank approves such an Application, the Customer has executed any other documents the Bank requires and complied with the terms of that documentation funds shall be credited to an account specified by the Customer.
- 12.6 Applications for trade loans shall include details as to currency, amount, term (number of days), commencement date, maturity date, details of the underlying trade transaction, full disbursement instructions, repayment instructions and any other details and terms and conditions required by the Bank.
- 12.7 A trade loan must be paid on its maturity date from either proceeds provided by a issuing/reimbursing bank (if applicable) or, failing payment of proceeds by a issuing/reimbursing bank or where no issuing/reimbursing bank is involved in the Trade Service, by the Customer.
- 12.8 The Customer shall pay interest on each trade loan (including amounts credited to the Customer's account upon negotiation of Documents) at an interest rate and margin applicable to such trade loans as set out in this Agreement or as otherwise determined by the Bank.
- 12.9 The Customer and the Bank may agree that interest shall be paid either:
 - (1) in advance by deducting it from the proceeds of the trade loan before the net proceeds are provided to the Customer; or
 - (2) in arrears when the trade loan is received in full by the Bank from the issuing or reimbursing bank or Customer.
- 12.10 At any time during the term of a trade loan the Bank may arrange for the drawing and execution in the Customer's name, of a Bill (in the currency of the trade loan) (each such bill of exchange is called a '**Reliquification Bill**') on any agency or office of the Bank or any other office of the Bank's Related Bodies Corporate or correspondents, provided that:
 - (1) the maturity date of any such Reliquification Bill(s) is not later than the maturity date of the related trade loan;
 - (2) the Bank pays any charges, fees or government imposts relating to the Reliquification Bills; and
 - (3) the Customer's responsibility to the Bank is limited to repaying the total amount owing in connection with the trade loan on or before the maturity date of the trade loan.
- 12.11 The Customer appoints the Bank, and each authorised officer of the Bank appointed for this purpose, severally, as its attorney to sign and/or endorse each Reliquification Bill

drawn and executed by the Bank under this clause 12 on the Customer's behalf, and to complete the Reliquification Bill.

13 Bank guarantees and standby letters of credit

The Customer may make an Application to the Bank to issue bank guarantees and standby letters of credit. If the Bank approves such an Application, the bank guarantee or standby letter of credit shall be issued subject to such terms and conditions as the Bank may specify in relation to that bank guarantee or standby letter of credit and as set out in the application and this Agreement.

14 Security over Pledged Instruments and Pledged Goods

14.1 The Customer pledges the Pledged Goods and the Pledged Instruments as security for the payment or discharge to the Bank on demand of the Secured Money and the performance of its obligations under this Agreement. Any restriction on the right of consolidating securities shall not apply to the pledge.

14.2 This pledge shall be a continuing security, in addition to, not affected by and enforceable despite the existence of any other Security Interest held by the Bank and notwithstanding anything the Bank may do or omit to do under any such Security Interest.

14.3 Until the Secured Money is fully repaid to the Bank:

- (1) the Pledged Goods shall be dealt with by the Customer 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 in them including, without limitation, keeping the Pledged Goods separate from the Customer's other property. The Customer must give the Bank such periodical reports and other particulars concerning the Pledged Goods or the Pledged Instruments as the Bank may require from time to time;
- (2) the Bank is authorised, at its discretion, at any time without notice to the Customer to enter any premises for the purpose of inspecting or securing possession or custody of the Pledged Goods and also to take such steps as it considers necessary or desirable to protect its interest in the Pledged Goods; and
- (3) the Bank may at any time and as the Bank may in its absolute discretion think fit;
 - (a) without demand, notice, legal process or any other action with respect to the Customer or any other person; and
 - (b) without prejudice to any of the Bank's other powers, rights and remedies under any document,

cause the Pledged Goods (or any part of the Pledged Goods), to be landed, stored, transported, insured, or sold (or sold without landing) or otherwise disposed of on such terms and for such consideration (whether payable or deliverable immediately or by instalments), or negotiate or otherwise dispose of the Pledged Instruments, free from any restriction and claims, and in such circumstances:

- (i) the Bank is authorised to make the necessary arrangements with sellers, shippers, carriers, warehousemen, insurers and/or any other relevant person without being liable in any manner whatsoever for the default or negligence of any of them, and to pay on behalf of the Customer all freight, warehousing charges, dock charges, insurance premiums and other charges relating thereto; and

- (ii) the Bank shall not be liable for any loss suffered by the Customer as a consequence of such action.

- 14.4 The Bank may apply the proceeds derived from the Pledged Goods and/or Pledged Instruments under clause 14.3(3) in or towards the discharge of the costs incurred in obtaining the proceeds and of the Secured Money whether then due and payable or not and in such order as the Bank may from time to time conclusively determine. If such proceeds are insufficient for such purposes, the Customer undertakes immediately to make good such deficiency.
- 14.5 The Customer assigns to the Bank any and all the rights which the Customer may have as the unpaid seller of the Pledged Goods.
- 14.6 All insurance policies in respect of the Pledged Goods issued in the name of the Customer shall be assigned to the Bank or endorsed in favour of the Bank or otherwise be deemed modified such that in the event of loss of or damage to the Pledged Goods, the insurance proceeds shall be paid to the Bank who shall have the absolute right to apply the same as if it were the sale proceeds of the Pledged Goods.

15 Undertakings for Pledged Goods and Pledged Instruments

- 15.1 The Customer undertakes and warrants that:

- (1) the Customer has a good right to pledge with the Bank the Pledged Instruments and the Pledged Goods and that the Pledged Instruments and the Pledged Goods are within the Customer's own disposition and control and are and shall remain free from any other pledge, charge, lien (other than in the ordinary course of trading) or encumbrance of any kind;
- (2) the Customer shall insure the Pledged Goods for their full value against all insurable risks in such manner as the Bank may require and, if so requested by the Bank, shall arrange for the Bank's interest in the Pledged Goods to be endorsed on the relevant policy and direct the insurer to make payment direct to the Bank in respect of any damage or loss. The Customer irrevocably authorises the Bank to recover the amount due from the insurer;
- (3) the Customer shall make payment to the Bank of all insurance proceeds received by it in respect of the Pledged Goods and, pending payment, shall hold such proceeds on trust for the Bank;
- (4) the Customer shall endorse the Pledged Instruments and/or the Pledged Goods in favour of the Bank, deposit the Pledged Instruments and/or the Pledged Goods with the Bank or to its order and note in its records the interest of the Bank in the Pledged Instruments and/or the Pledged Goods;
- (5) the Customer shall pay the Bank on demand all costs and expenses incurred by the Bank of and incidental to any actual or attempted landing, storage, transportation, insurance, docking, sale or other disposal of the Pledged Goods and indemnifies the Bank on demand against the same; and
- (6) the Customer shall execute and sign all such documents as the Bank may consider expedient for perfecting the Bank's title or for vesting or enabling the Bank to vest any of the Pledged Instruments and/or the Pledged Goods in or for facilitating delivery of the same to the Bank or its nominees or any purchaser, and the Customer shall do all such acts and things as may be necessary or expedient for effecting or in connection with any sale, realisation, negotiation or other disposition of the Pledged Instruments and/or the Pledged Goods the Bank may make or for the effective exercise of the Bank's powers and rights under this Agreement.

16 Running trust receipt agreement

16.1 If the Bank, at the request of the Customer, releases or delivers Documents to the Customer or otherwise allows the Customer to take delivery of the Goods, before the Secured Money is fully repaid to the Bank, the Customer shall:

- (1) at the request of the Bank execute and deliver to the Bank trust receipts in form and substance satisfactory to the Bank together with any other documentation that the Bank may require and the Customer shall be bound by the provisions relating to Goods as contained in this Agreement and in the individual trust receipt (if any) given to the Bank for such Goods;
- (2) hold the Goods exclusively for the purpose of their sale or other disposition approved by the Bank on normal trade terms at market value;
- (3) hold the Documents and the Goods when received (and the proceeds from the sale of them) in safe custody and on trust for the Bank and pay the proceeds of sale of Goods (without deduction of any expenses) immediately upon receipt of the proceeds (or each portion of them) to the Bank or to authorise the Bank to receive such proceeds direct from third parties;
- (4) until sale or delivery (if applicable), warehouse the Goods in the name of the Bank and at the Customer's cost and immediately deliver to the Bank the warrants for the Goods and otherwise authorise the Bank (or any officer of the Bank) to enter any warehouse or other premises where the Goods may be located at any time for the purpose of viewing, inspecting, identifying or taking possession of the Goods;
- (5) insure the Goods against fire and any other risks that the Bank may reasonably require to their full insurable value and to hold the policies on behalf of the Bank and in case of loss pay the insurance moneys to the Bank in the same manner as proceeds of sale and make good any deficiency;
- (6) keep any transaction involving the Goods separate from all other transactions and to keep the Documents, the Goods and any proceeds from the sale of them separate and distinct from any other documents, goods or proceeds relating to or arising from any other transaction;
- (7) unless otherwise agreed with the Bank, not permit the Goods to be processed or altered or incorporated in any other goods without the Bank's consent; and
- (8) not create or allow to exist any Security Interest in any Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts, as the case may be (otherwise than in favour of the Bank or as agreed to by the Bank in writing), until the Bank has been paid in full.

16.2 The Customer acknowledges and agrees that where clause 16.1 applies:

- (1) the Customer has no claim, lien or set-off of any kind in respect of anything that the Customer holds on trust for the Bank under this clause 16;
- (2) the Goods shall remain the property of the Bank until sold or otherwise disposed of and risk in the Goods remains with the Customer at all times; and
- (3) subject to any order of application of payments prescribed by the PPSA to the extent applicable, any proceeds of sale or other disposal paid to the Bank in accordance with this clause 16 may be appropriated and applied by the Bank as it thinks fit.

17 Foreign Exchange Facilities

- 17.1 The Bank may in its sole discretion provide foreign exchange services to the Customer by agreeing from time to time to enter into a foreign currency transaction with the Customer.
- 17.2 All FX Transactions are entered into on the basis that they form a single contract between the Bank and the Customer and that the parties would not otherwise enter into or continue the FX Transactions.
- 17.3 If the FX Transaction is arranged orally between the Bank and the Customer the Bank will issue a confirmation letter or notice (**Confirmation**) after each FX Transaction is entered into which evidences the terms of that transaction. The Customer will no later than 1 Business Day after receipt of the Confirmation, notify the Bank in writing if the Customer considers that there is any error in the Confirmation terms. If no notification is received within that time the Customer is bound by and may not dispute the terms of the FX Transaction as set out in the Confirmation unless the Bank determines otherwise in its sole discretion.
- 17.4 The Customer must settle FX Transactions in the manner specified in the Confirmation by payment of the relevant currency under the FX Transaction for value on the specified date unless the Bank agrees otherwise. If each of the Bank and the Customer owe each other amounts under FX Transactions in the same currency on the same date, then the Bank may net off the difference between those amounts and only the balance will remain owing.
- 17.5 The Bank is irrevocably authorised by the Customer to close out in accordance with the Bank's usual market practice all FX Transactions which are outstanding as at the relevant Maturity Date and the Customer must immediately pay to the account of the Bank or as applicable the Bank shall immediately pay or account to the Customer (as the case may be) any net amount which is due from one party to the other in consequence of that close out.
- 17.6 Upon the occurrence of any Event of Default:
- (1) the Bank may at any time after that Event of Default without notice to, and at the expense of, the Customer make a spot or forward purchase on behalf of the Customer at the prevailing market price as determined by the Bank in order to close out or reduce the actual or contingent liability of the Customer in respect of any outstanding transaction and for the purposes of this clause 17 the Customer irrevocably grants the Bank the right to conclude FX Transactions with the Customer; and
 - (2) the Bank is irrevocably authorised by the Customer (but without any obligation to do so on the part of the Bank) to combine, offset or consolidate any of the Customer's accounts with the Bank or to apply any monies deposited or lodged with the Bank on any account whatsoever in or towards satisfaction of any of the Customer's obligations or liabilities to the Bank whether actual or contingent, joint or several.
- 17.7 The Customer acknowledges and agrees that without limitation to the provisions of clause 36.13:
- (1) the Bank has made no representation or warranty to the Customer as to the result of dealing in FX Transactions;
 - (2) the risk of loss in entering FX Transactions can be substantial;
 - (3) the Customer shall itself bear all losses incurred or suffered by the Customer resulting from any FX Transaction;

- (4) the Bank shall in no circumstances be under any duty to inform the Customer or any movement in prices or any other matter which results or might result in the Customer making a loss under any FX Transaction or which otherwise affects or might affect the interests of the Customer in any FX Transaction;
- (5) The Customer agrees that it will, independently and without reliance on Bank, use its own judgment and make its own decision in relation to each FX Transaction.
- (6) The Customer agrees that the Bank shall not be responsible for any damage, loss or expense suffered or incurred by the Customer as a result of or in connection with:
 - (a) misinterpretation by the Customer of any written or verbal information supplied by the Bank in relation to any FX Transaction or proposed FX Transaction;
 - (b) any decision by Bank not to act upon any instructions given by the Customer where:
 - (i) instructions have not been given in accordance with the relevant FX Transaction;
 - (ii) the Bank believes an Event of Default has occurred or is likely to occur; or
 - (iii) as a matter of Law the Bank is unable to act upon those instructions.

18 General authorisations and undertakings to the Bank

18.1 The Customer authorises the Bank:

- (1) subject to clause 19, to appoint any other person as its correspondent, nominee, service provider or agent to carry out the Trade Services or any part thereof or for the purpose of performing any of its obligations under the Trade Services, and the Bank may delegate any of its powers under this Agreement to such person;
- (2) to take such steps and to make such payments as it considers necessary, at the cost of the Customer, to remedy any default by the Customer in compliance with any of its obligations under this Agreement;
- (3) to notify any other person of its interest in the Pledged Instruments and/or the Pledged Goods;
- (4) to debit any account of the Customer with any payments, costs, charges or expenses of or in connection with the exercise by the Bank of any of its powers and rights contained in this Agreement, notwithstanding that such account may not have adequate funds or sufficient overdraft facility. If at the time there are insufficient funds available in the Customer's accounts held with the Bank to allow the debits authorised under any clause in this Agreement to be made on time, the Customer:
 - (a) authorises the Bank to advance the Customer an amount equal to any shortfall; and
 - (b) agrees to pay interest and a margin as determined by the Bank on the amount so advanced from (and including the day on which the advance is

made to (but excluding) the day on which that amount is paid (plus accrued interest) to the Bank.

18.2 The Customer undertakes to the Bank that it shall:

- (1) deliver or procure the delivery upon demand by the Bank of any and all Documents representing the Goods made between the Bank and the Customer from time to time. If any such Documents have been delivered to the Bank according to this Agreement, the Goods represented thereby shall form part of the Pledged Goods pledged in favour of the Bank, and if the Bank shall release or re-deliver to the Customer such Documents, the Customer shall, unless the Bank agrees otherwise in writing, hold the same and/or the goods represented thereby on trust for the Bank in accordance with clause 16;
- (2) reimburse the Bank on demand for the amount of any consignor's or carrier's invoices in relation to the Goods in the currency of the relevant invoice;
- (3) comply with all Laws, and pay all charges, duties and Taxes relating to the Goods and the export or import of Goods as well as all storage charges or freight and other amounts payable under any contract of carriage;
- (4) indemnify the Bank on demand in respect of any costs or other liabilities that may arise as a consequence of:
 - (a) the importation of the Goods that may be prohibited by Law from import into the country of destination; or
 - (b) the export of Goods that may be prohibited by Law from export from the country of origination;
- (5) provide the Bank with such information concerning the Documents and the Goods and any proposed sale of the Goods as the Bank may require;
- (6) keep the Bank informed of the whereabouts of the Goods and of any change in the condition, quality or quantity of the Goods;
- (7) upon request by the Bank, forthwith at its own cost and expense:
 - (a) appear and defend any action which may be brought against the Bank in connection with an inward trade Credit; and/or
 - (b) make any claim or take any action or institute any proceedings which the Bank may consider necessary or desirable and to recover any proceeds, compromise or settle any dispute in connection with any Documents, Goods, Pledged Instruments or Pledged Goods and any other relevant documents, charged property, sales proceeds or insurance proceeds on such terms as the Bank may in its absolute discretion consider appropriate;
- (8) without affecting the Bank's Security Interest under this Agreement, at the Customer's own cost, take any action necessary to register, perfect, preserve and maintain any Security Interest in the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts, as the case may be, which the Customer holds, or has the benefit of, under and in accordance with the PPSA;
- (9) [promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA including doing anything reasonably requested by the Bank for that purpose. For example, it will:

- (a) create and implement appropriate policies and systems; and
 - (b) where appropriate, take reasonable steps to identify security interests in its favour and to perfect and protect them, with the highest priority reasonably available);]
- (10) procure the removal of any registration (other than by or in favour of the Bank) in relation to any Security Interest that affects the priority of any Security Interest in favour of the Bank under this Agreement;
 - (11) immediately notify the Bank if the Customer becomes aware of any person taking any steps to register, or registering, a financing statement in relation to the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts, as the case may be;
 - (12) not cause or permit any person to acquire any interest (except with the prior written consent of the Bank) in any Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts, as the case may be;
 - (13) not cause or permit other goods to become commingled with, or accessions to, the Goods or the Pledged Goods, or the Goods or the Pledged Goods to become accessions to any other goods, without the Bank's prior written consent; and
 - (14) not allow any Goods or Pledged Goods to become a fixture to any property without the Bank's prior written consent.

19 Limitation on liability and indemnity

- 19.1 The Bank shall not be liable to the Customer for any default by any warehouse keeper, broker, auctioneers, or other person employed in connection with the Goods or the sale or other disposition thereof or for any neglect, default, loss or damage in connection with the Documents, Pledged Instruments or the Goods or Pledged Goods howsoever caused.
- 19.2 The Bank shall not be responsible to the Customer for any error, neglect, default, omission, insolvency or failure in business of any correspondent nominee, service provider or agent who is engaged by the Bank to carry out the Trade Services or any part thereof.
- 19.3 Neither the Bank nor its correspondents, nominees, service providers or agents shall be responsible for any delay in the redelivery, or non-redelivery, of any Documents, Pledged Instruments, Goods and/or Pledged Goods.
- 19.4 The Bank, its correspondents, nominees, service provider(s) and agents shall not be liable for any loss, damage (including loss of profit or any economic loss, whether direct or otherwise) or delay suffered by the Customer or any other person as a result of:
 - (1) any mechanical, electronic or other failure, malfunction, interruption, suspension, inaccuracy or inadequacy of the Bank's or any of its correspondents, nominees', service providers', or agents', telecommunication or computer systems or other equipment (whether software, hardware or otherwise in any other form) or its installation or operation (whether or not related to the operation or processing of date or date related data);
 - (2) any incomplete or erroneous transmission of any instruction or order of the Customer or any error in the execution of any such instruction or order (except gross negligence or wilful misconduct of the Bank's authorised officers); and/or

- (3) any delay or cancellation of any Trade Services which is caused directly or indirectly by any event or circumstances beyond the control of the Bank or any of its correspondents, nominees, service providers or agents.

19.5 The Customer shall indemnify on a full indemnity basis the Bank, its correspondents, nominees, service providers and agents against all liabilities, claims, demands, losses, fees, commissions, charges, expenses, costs and damages of any kind (including legal costs and Tax) which may now or hereafter be incurred by any of them, and all actions or proceedings which may now or hereafter be brought by or against them in connection with the carrying out of the Trade Services or otherwise in connection with the Documents, Pledged Instruments, Goods and/or the Pledged Goods and the exercise of any of the powers and rights by the Bank under this Agreement.

20 Authorised Signatory(ies)

20.1 The Bank is authorised to act on the instructions of the Authorised Signatory(ies) in respect of any matters concerning the Trade Services (including but not limited to the creation and termination thereof), the Documents, Pledged Instruments, Goods and the Pledged Goods.

20.2 The Authorised Signatory(ies) is/are authorised and empowered by the Customer to have full power to act on the Customer's behalf and to do all acts, matters and things which the Customer can personally do in respect of any matter in connection with, relating to or arising out of the Trade Services and/or this Agreement. Without limiting the generality of the foregoing, the Authorised Signatory(ies) is/are authorised to give directions to the Bank to:

- (1) debit any of the Customer's account(s) with the Bank for the purpose of effecting any Trade Services; and
- (2) credit the proceeds derived or arising from any Trade Services into any of the Customer's account(s) or otherwise dispose of them in such manner as the Authorised Signatory(ies) shall think fit.

20.3 The Bank may, at its discretion, accept instructions believed by it to have emanated from the Authorised Signatory(ies) and if it acts in good faith on such instructions, such instructions shall be binding on the Customer and the Bank shall not be liable for doing so, whether or not the instructions were given by the Authorised Signatory(ies), and the Bank shall not be under any duty to verify the identity of the person(s) giving those instructions.

21 Payments

21.1 Payments in Cleared Funds

Payments by the Customer shall be made to the Bank as specified by the Bank in Cleared Funds without any set-off, counterclaim, withholding or condition of any kind except that, if the Customer is compelled by Law to make such withholding, 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.

21.2 Currency

- (1) Payment by the Customer to the Bank shall be in the currency of the relevant liability or, if the Bank so agrees in writing, in a different currency, in which case the conversion to that different currency shall be made at the Exchange Rate or at a rate pre-arranged between the Bank and the Customer by way of a forward exchange contract.

- (2) If a payment is due by the Customer in a currency and the Bank receives payment in a different currency, then the Bank may convert the amount received into the due currency at the Exchange Rate at which the Bank is able to purchase the due currency with the amount received at the time of its receipt. The Bank may make any number of currency conversions into any number of currencies in order to do so. The Customer satisfies its obligation to pay in the due currency only to the extent of the amount of the due currency ultimately purchased by the Bank after deducting the costs of any such conversions.

21.3 **Currency**

No payment to the Bank under this Agreement (whether pursuant to a term of this Agreement, any judgement, 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 Agreement and, to the extent that the amount of any such payment shall, on actual conversion into such currency at the Exchange Rate or at a rate pre-arranged between the Bank and the Customer by way of a forward exchange contract, fall short of the amount of the obligation expressed in that currency, the Customer shall be liable for the shortfall and will pay the same on demand by the Bank.

21.4 **Application of money**

Any moneys paid to the Bank may be applied in or towards satisfaction of the Secured Money in such manner and order as the Bank deems fit or placed to the credit of such account as the Bank may determine with a view to preserving its rights to prove for the whole of the Secured Money.

21.5 **Repayment of money**

If any payments made in settlement of the Secured Money or part hereof 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 Agreement as if such moneys had not been paid.

22 **Representations made by the Customer**

22.1 **General**

The Customer represent that, on the date the Customer signs this Agreement, each time it makes a Drawing or a payment or repayment is made under this Agreement, each of the following statements is true:

- (1) **Transaction Documents binding**

each of the Transaction Documents executed by the Customer or a Surety is binding on the Customer or the Surety, as the case requires, and can be enforced against the Customer or the Surety in accordance with its terms;

- (2) **no present default**

no default under this Agreement, or any other default (however defined) under any other agreement, undertaking or instrument to which the Customer is a party or which is binding on the Customer, has occurred and is continuing;

- (3) **no potential default**

nothing has happened that would become a default mentioned in clause 22.1(2) simply by notice being given or time elapsing;

(4) **no undisclosed trust**

except as notified to the Bank in writing prior to date of the Facility Letter, neither the Customer nor any of the Sureties is acting as trustee of a trust;

(5) **no undisclosed Security Interests**

except as notified to the Bank in writing prior to the date of the Facility Letter, there are no Security Interests over the Customer's property or any Surety's property over which a Security Interest has or will be given to the Bank;

(6) **no undisclosed court cases**

except as notified to the Bank in writing, no litigation, arbitration or administrative proceeding exists or is pending, and the Customer does not know of any which is threatened, that may have a material adverse effect on:

- (a) the Customer's, a Buyer's or a Surety's business, assets or financial condition; or
- (b) the Customer's, a Buyer's or a Surety's ability to perform obligations under any of the Transaction Documents;

(7) **the Customer's Financial Statements**

the Customer's most recent annual Financial Statements:

- (a) show a true and fair view of the Customer's financial condition and the results of the Customer's operations for the financial year that they cover;
- (b) disclose all material liabilities; and
- (c) if the Customer is a Company, comply with the Laws of Australia and (except where inconsistent with those Laws) generally accepted accounting principles consistently applied in Australia.

The Customer also represents that there has been no material adverse change in the Customer's financial condition since the date of the Financial Statements;

(8) **Financial Statements of certain Sureties**

for each corporate Surety which is a Related Body Corporate of the Customer, its most recent annual Financial Statements:

- (a) show a true and fair view of its financial condition and the results of its operations for the financial year that they cover;
- (b) disclose all material liabilities; and
- (c) comply with the Laws of Australia and (except where inconsistent with those Laws) generally accepted accounting principles consistently applied in Australia.

The Customer also represent that there has been no material adverse change in the Surety's financial condition since the date of the Financial Statements;

(9) **full disclosure**

the Customer has disclosed to the Bank all material matters that the Customer knows of which affect:

- (a) the Customer's, a Buyer's or a Surety's business, assets or financial condition; or
- (b) the Customer's, Buyer's or a Surety's ability to perform obligations under any of the Transaction Documents;

(10) **no contravention**

the Customer's entering into this Agreement, the Customer's executing any of the other Transaction Documents and carrying out the Customer's obligations under them will not contravene:

- (a) a Law or government requirement that applies to the Customer or any of the Customer's property;
- (b) an authorisation, licence or exemption that applies to the Customer or any of the Customer's property;
- (c) an agreement which binds the Customer or any of the Customer's property;
- (d) if the Customer is a Company, the Customer's constitution; or
- (e) if the Customer is a partner, any partnership document.

The Customer also represents that the Customer's execution of the Transaction Documents will not give rise to a need for an authority, licence or exemption that the Customer does not already hold; and

(11) **no contravention by Surety**

the execution by a Surety of any of the Transaction Documents and the carrying out of its obligations under them will not contravene:

- (a) a Law or government requirement that applies to it or any of its property;
- (b) an authorisation, licence or exemption that applies to it or any of its property;
- (c) an agreement which binds it or any of its property;
- (d) if a Company, its constitution; or
- (e) if a partner, any partnership document.

The Customer also represents that execution by a Surety will not give rise to a need for an authority, licence or exemption that it does not already hold.

22.2 Notice

The Customer agrees to give the Bank prompt written notice if, after it was made or given to the Bank, a representation or statement made to the Bank or information given to the Bank ceases to be true or becomes misleading.

22.3 Trust

- (1) This clause 22.3 applies to the Customer or a Surety if it is a trustee of a Trust.
- (2) The Customer or Surety enters into the Transaction Documents to which it is a party:
 - (a) as sole trustee of the Trust in relation to the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or other personal property comprising the trust fund of the Trust and as beneficial owner in relation to any other Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or other personal property ; and
 - (b) not only as trustee of the Trust but also so as to bind itself personally for the obligations of the Customer or Surety, as applicable, under the Transaction Documents whether or not it has the capacity to enter into the Transaction Documents as trustee of the Trust.
- (3) The Customer or the Surety as applicable, both as trustee of the Trust and in its own right, represents and warrants that:
 - (a) it is empowered by the Trust Deed:
 - (i) to enter into and perform the Transaction Documents to which it is a party including any transactions under them; and
 - (ii) to carry on its business as now conducted or contemplated and to own its property and assets,in its capacity as trustee of the Trust and there is no restriction or condition upon such activity by it;
 - (b) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the Trust Deed for the entry into and performance by it of the Transaction Documents to which it is a party and any transactions under them;
 - (c) it is the sole trustee of the Trust;
 - (d) no property of the Trust has been resettled or set aside or transferred to any other trust or trusts;
 - (e) the Trust has not been terminated, nor has the date or any event for the vesting of the assets of the Trust occurred; and
 - (f) the Customer's right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way.
- (4) Unless the Bank otherwise consents in writing the Customer or the Surety as applicable, both as trustee of the Trust and in its own right, must:
 - (a) ensure that the Trust Deed is not amended or revoked, without the prior consent of the Bank (which will not be withheld unreasonably);

- (b) ensure that there is no resettlement, setting aside or transfer to any other trust or person of any of the property of the Trust;
 - (c) duly and punctually comply with its obligations and duties under the Trust Deed and at Law;
 - (d) ensure that no other person is appointed trustee of the Trust;
 - (e) not do anything that would cause or enable its removal, nor will it retire, as trustee of the Trust;
 - (f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Trust Deed;
 - (g) ensure that:
 - (i) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the Trust Deed); and
 - (ii) its lien over the property of the Trust has priority over the rights of the beneficiaries of the Trust;
 - (h) not make any distribution of the income of the Trust for so long as:
 - (i) anything that with the giving of notice or passage of time or both would become an Event of Default has occurred and is subsisting; or
 - (ii) an Event of Default has occurred and has not been waived;
 - (i) not make any distribution of the capital of the Trust, if that distribution relates to the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or other personal property or otherwise in any way adversely affects the value of the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or other personal property; and
 - (j) if the Trust is a unit trust, not permit any redemption of units in the Trust.
- (5) It will be an Event of Default under this document if, without the prior consent of the Bank:
- (a) a new or additional trustee of the Trust is appointed;
 - (b) the beneficiaries resolve to wind up the Trust, or the Customer or the Surety as applicable is required to wind up the Trust under the Trust Deed or applicable Law, or the winding up of the Trust commences;
 - (c) the Trust is held or is conceded by the Customer or the Surety as applicable not to have been constituted or to have been imperfectly constituted; or
 - (d) the Customer or the Surety as applicable ceases to be authorised under the Trust to hold in its name the property of the Trust and to perform its obligations under the Transaction Documents to which it is a party.

23 Information

23.1 The Customer agrees to provide the Bank with any financial or other information the Bank asks for by the time that the Bank specifies.

23.2 The Customer must give the Bank at least 7 days prior written notice of any of the following events:

- (1) a change of its name (or if it is a trust or partnership, the name of the trust or the partnership); or
- (2) an application for an Australian Business Number, Australian Registered Body Number or Australian Registered Scheme Number, and

will provide to the Bank, immediately upon it becoming available, its new name, Australian Business Number, Australian Registered Body Number or Australian Registered Scheme Number, as the case may be.

23.3 The Bank agrees that:

- (1) the Bank will only ask the Customer for information which the Bank considers relevant; and
- (2) the Bank will specify, having regard to the kind of information sought, what the Bank considers to be a reasonable time within which the Customer is to provide the information.

The Customer only needs to provide the information to the Bank in writing, if the Bank asks for it to be in writing.

23.4 If the Customer is a public Company, the Customer also agrees to provide the Bank with all written information that the Customer gives to the Customer's shareholders (generally or to any class of them) or to a stock exchange, at the same time as the Customer gives it to them.

24 Default

24.1 The Customer will be in default if any of the following things happen:

- (1) **failure to pay:** the Customer or a Buyer fails to pay on time an amount that is due and payable by the Customer under a Transaction Document;
- (2) **Security Interests become enforceable:** an event occurs that causes a Security Interest given by the Customer in favour of the Bank to become enforceable;
- (3) **statements false or misleading:** a representation or statement made to the Bank or information given to the Bank (whenever it was made or given) in or in connection with the Transaction Documents was false or misleading (whether by omission or otherwise) when it was made or given;
- (4) **other obligations not paid:** the Customer fails to pay before the end of any grace period an amount that is due and payable to someone other than the Bank in respect of obligations relating to financial accommodation or financial arrangements;

- (5) **acceleration of other obligations:** any obligation that the Customer has becomes due and payable, or capable of being declared due and payable, before its stated maturity, but this does not include where it does so at the Customer's option;
- (6) **Transaction Documents or Security Interest ineffective:** a provision of a Transaction Document or a Security Interest granted in favour of the Bank under this Agreement:
 - (a) does not have effect, or ceases to have effect, in accordance with its terms;
 - (b) is not perfected or ceases to be continuously perfected; or
 - (c) is or becomes void, voidable, illegal, invalid or unenforceable (but not simply because of the principles and rules of the common law or of equity that affect creditors' rights generally) or loses its intended priority;
- (7) **Transaction Document or Security Interest claimed to be ineffective:** the Customer or another person (other than the Bank) claims or alleges that an event described in clause 24.1(6) has occurred;
- (8) **distress or execution:** some or all of the Customer's property is seized by or on behalf of a creditor or under legal process;
- (9) **ceasing business:** the Customer stops, or threatens to stop, carrying on all or a material part of the Customer's business;
- (10) **insolvency:** any Liquidation occurs in relation to the Customer;
- (11) **facilities used for different purpose:** in the Bank's opinion, the Customer uses the Trade Services for a purpose other than the purpose for which the Bank made it available;
- (12) **change in circumstances:** circumstances arise that, in the Bank's opinion, may have a material adverse effect on:
 - (a) the Customer's or a Buyer's business, assets or financial condition; or
 - (b) the Customer's or a Buyer's ability to perform the its obligations under or in connection with any Transaction Document;
- (13) **other events specified in the Facility Letter:** an event occurs which is specified in the Facility Letter to be an event of default;
- (14) **failure to perform obligations:** the Customer breaches an obligation under a Transaction Document and either:
 - (a) the breach cannot be remedied; or
 - (b) if it can be remedied, the Bank give the Customer a written notice requiring the Customer to remedy it and, 5 business days later, it is still not remedied.

24.2 If the Customer is a partnership, the Customer will also be in default if any of the following things happen:

- (1) **change in partnership:** without the Bank's written consent, there is a change in the constitution of the partnership; or

- (2) **dissolution of partnership:** without the Bank's written consent, the partnership is dissolved.
- 24.3 If the Customer entered into this agreement as a trustee of a trust, the Customer will also be in default if any of the following things happen:
- (1) **trust not properly constituted:** the trust is held by a court not to have been properly constituted or the Customer concedes that the trust has not been properly constituted;
- (2) **termination of trust:** the trust terminates or the beneficiaries of the trust resolve to terminate it;
- (3) **change of trustee:** the Customer ceases:
- (a) to hold the trust property in the Customer's name; or
- (b) to be trustee;
- (4) **breach of trust:** the Customer commits a breach of trust which, in the Bank's opinion, is material.
- 24.4 Clauses 24.1 to 24.3 inclusive (modified as necessary as if the Surety were the Customer) also applies to a Surety. If a Surety is in default, then the Customer is deemed to be in default.
- 24.5 The Customer agrees to notify the Bank in writing promptly if the Customer is in default or a default is likely to occur.

25 Consequences of default

- 25.1 If the Customer is in default, the Bank may waive the rights that the Bank has or the Bank may do any one or more of the following:
- (1) subject to clause 25.3:
- (a) terminate immediately some or all of Trade Services being provided to the Customer and/or this Agreement;
- (b) change immediately some or all of the conditions on which one or more of the Trade Services are made available (in particular, the Bank may cancel an unused Trade Services Limit by reducing the Trade Services Limit for the Trade Service or the Bank may make the Trade Service 'on demand'); and
- (c) make some or all of the money that is or may become owing to the Bank by the Customer in respect of one or more of the Trade Services immediately due and payable to the Bank; and
- (2) require the Customer to provide the Bank with an amount of cash funds as determined by the Bank to cover the Bank for any contingent liabilities the Bank may have under a Trade Service (for example, a contingent liability under a letter of credit).
- 25.2 The Bank will give the Customer written notice after acting under clause 25.1(1)(a) or 25.1(1)(b); and before acting under clauses 25.1(1)(c) and 25.1(2). The notice is effective immediately the Bank gives it.

- 25.3 If it is not unlawful or illegal, any Drawing accepted and confirmed by the Bank prior to a Default (**Accepted Drawing**) will not be accelerated and will continue to be governed by this Agreement until the underlying contract and incidental Documents relating to that Accepted Drawing are completed in accordance with their terms and payment in full has been made to the Bank in respect of that Accepted Drawing. Upon payment in full to the Bank of the Accepted Drawing and any other moneys due to the Bank in respect of that Accepted Drawing the Trade Service relating to that Accepted Trade Service and/or this Agreement may, at the election of the Bank, terminate.
- 25.4 The Customer agrees to pay the Bank, on demand, the amount of all the costs the Bank incurs, and the losses the Bank suffers, because of, or in connection with, a default. Without limiting what this amount may be, it includes whatever amount the Bank determines is needed to compensate the Bank for costs incurred or losses suffered because of early payment of amounts outstanding. The Bank will take into account any benefit that, in the Bank's opinion, the Bank will get because of the early payment or the failure.
- 25.5 The Customer agrees that a default under this Agreement is a default or an acceleration event under all other agreements that the Customer has with the Bank. This clause 25.5 applies despite anything in the other agreement.

26 Changes in government requirements

- 26.1 The Customer shall within 3 Business Days of a demand by the Bank, pay the Bank the amount of any Increased Costs incurred by the Bank or any of its Related Bodies Corporate as a result of:
- (1) the introduction of or any change in (or in the interpretation or application of) any Law or regulation; or
 - (2) compliance with any Law or regulation,
- made after the date of this document. This includes without limitation, any Law or regulation with regard to capital adequacy, prudential limits, liquidity, reserve assets or Tax.
- 26.2 The amount payable will be calculated by the Bank from the day when the Bank first incurred the Increased Cost. The Bank will provide to the Customer reasonable written evidence to allow the Customer to verify that the Bank has suffered an increase in its costs to which this clause 26 relates.
- 26.3 If it becomes unlawful or illegal in any jurisdiction for the Bank to perform any of its obligations as contemplated by this Agreement:
- (1) the Bank will promptly notify the Customer upon becoming aware of that event; and
 - (2) upon the Bank notifying the Customer, the Trade Service affected by that unlawfulness or illegality and, at the Bank's election, this Agreement is terminated on the earlier of 10 Business Days from the date of the notice or the day the unlawfulness or illegality takes affect.

27 Set-off

- 27.1 In addition and without prejudice to any general banker's lien, right of set-off or similar right to which the Bank may be entitled, the Bank shall have the right and is authorised, to the fullest extent permitted by Law, from time to time and at any time without notice to the Customer (any such notice being expressly waived) to set-off and appropriate and apply any credit balance on any of the Customer's account(s) and/or deposit(s) in whatever

currency with the Bank (whether subject to notice or not and whether matured or not) against or on account of the Customer's obligations and liabilities whatsoever (whether present or future, actual or contingent and whether alone or jointly with any other persons) due, owing or incurred to the Bank.

28 Lien

28.1 The Bank is authorised to exercise a lien over all property of the Customer coming into the possession or control of the Bank, for custody or any other reason and whether or not in the ordinary course of banking business, with power for the Bank to sell such property to satisfy the Secured Money.

29 Customer's information

29.1 The Customer irrevocably and unconditionally authorises and empowers the Bank to:

- (1) instruct any other bank that is a Related Body Corporate of the Bank to provide the Bank with any information (without limitation as regards its scope) relating to the Customer or its account(s); or
- (2) disclose any information to any third party (including but not limited to any bank that is a Related Body Corporate of the Bank) relating to the Customer and/or its account(s) with the Bank, whether now in existence or opened hereafter which provision or, as the case may be, disclosure of information may be required in order to give effect to any Trade Service or any provision of this Agreement, or to comply with any lawful order.

30 Perfection of security interest

30.1 The Customer acknowledges and agrees that:

- (1) the Bank is entitled, at the Customer's cost, to take any steps as it sees fit to register (including, in the Bank's sole discretion, as a security interest or purchase money security interest), amend or remove the registration of, or otherwise perfect, its Security Interest in any Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts, as the case may be, or to better secure the Bank's position in respect of any Transaction Document, under or for the purposes of the PPSA or any other legislation; and
- (2) the Bank has given or will give value for the Security Interest granted by the Customer under this Agreement, including by its promises under this Agreement.

31 Authorisation to the Bank

31.1 The Customer irrevocably and unconditionally authorises the Bank, its agent(s) and any officer for the time being of the Bank and each of them severally (Representative) to be the Customer's true and lawful representative (with full power of delegation and substitution) and in the name of the Customer or in the name of the Bank and on behalf of the Customer to execute and sign all documents and instruments and do all acts, matters and things whatsoever which shall in the Bank's sole and absolute opinion be necessary or expedient that the Customer should execute, sign or do for the purpose of carrying out any trust or obligation declared or imposed upon the Customer or for giving to the Bank the full benefit of any of the provisions hereof. The Customer further agrees that the Customer shall ratify and confirm all that the Representative shall lawfully do or cause to be done pursuant to provision aforesaid.

- 31.2 The Customer indemnifies the Representative and its substitute(s) against all costs, charges, expenses and losses which the Representative and its substitute or substitutes may incur in the lawful execution of the powers hereby conferred upon the Representative and its substitute(s),

32 Collection, use and disclosure of information

- 32.1 The Customer consents to the Bank collecting, using, retaining and disclosing information as set out in each relevant Application or consent form signed by the Customer or provided to the Bank in connection with any of the Trade Services.

33 Anti Money Laundering and Terrorist Financing

- 33.1 The Customer agrees and acknowledges that in connection with any:

- (1) relevant Laws or regulations;
- (2) requirements or requests of any Government Agency; and
- (3) policies or guidelines adopted by the Bank,

relating to anti money laundering, anti terrorism, privacy legislation, financial reporting, tax or any investigation or monitoring of financial transactions in Australia or in any other country, the Bank may delay, block, or refuse to make, receive or facilitate any payment or transfer, and may access, investigate or monitor any such payment or transfer or any related communication to or from the Customer.

34 Notices

- 34.1 Any notice, request or instruction given by the Customer to the Bank or the Bank to the Customer must be in writing and delivered by hand or sent by post or facsimile transmission to the address as notified by the Bank to the Customer or the Bank to the Customer from time to time.
- 34.2 Any written notice, demand, request, invoice or other correspondence sent by one party to another, to the addressee's address or facsimile number (as the case may be) as notified by the addressee to the sender from time to time, will be deemed to have been received by the addressee:
- (1) if sent by post, 3 Business Days after posting;
 - (2) if delivered, on the day of delivery or, if the time of delivery is after 4.00 pm or the day of delivery is not a Business Day, on the following Business Day; and
 - (3) if sent by facsimile transmission and the relevant transmission report showing the transmission to have been completed without error, on the day of transmission or, if the transmission is completed after 4.00 pm or the day of transmission is not a Business Day, on the following Business Day, unless the addressee notifies the sender within the Business Day following the day of deemed receipt that the transmission was not received completely or was not received in a legible form.
- 34.3 If the Customer requests the Bank to accept a notice, request or instruction transmitted by facsimile (**facsimile instruction**):
- (1) the Customer must comply with the security procedure or measure agreed between the Bank and the Customer (if any);

- (2) the Bank may accept or reject a facsimile instruction at its discretion;
- (3) if the Bank accepts a facsimile instruction that purports to have been transmitted or authorised by the Customer and appears to be in compliance with the security procedure or measure as agreed between the Bank and the Customer (if there is any):
 - (a) the Bank may rely on that facsimile instruction without making any enquiries;
 - (b) the facsimile instruction will be deemed effective as the Customer's notice, request or instruction; and
 - (c) the Customer indemnifies the Bank against, and will pay to the Bank on demand, the amount of all losses, liabilities, costs and expenses (including all legal expenses on a full indemnity basis) incurred by the Bank as a result of the Bank accepting and acting on the facsimile instruction.

35 Recourse

35.1 Notwithstanding that any Trade Service is provided on a without recourse basis or is subject to any term to the contrary, if:

- (1) there is a fraud, illegality or unauthorised act committed by any person in connection with the Trade Service and/or its related Transaction Documents;
- (2) there is non payment to the Bank by, or the Bank is required to reimburse any person for moneys received by the Bank from, the Customer, the Buyer or any issuing/reimbursing bank because of:
 - (a) a dispute (whether under contract, tort or otherwise) between the Customer and it's Buyer on which the Buyer or the issuing/reimbursing bank relies or purports to rely to deny payment under the Transaction Documents; or
 - (b) any injunction or other court order made in connection with the Trade Services and/or its related Transaction Documents; or
- (3) there are any dealings, matters or things in connection with the Trade Service and/or its related Transaction Documents to which clause 33 applies,

the Bank shall have no liability to pay the Customer in connection with that Trade Service or if the Bank has already paid the Customer in connection with that Trade Service shall have full recourse to the Customer for repayment of the amount paid by the Bank and payment of any loss, cost or expense the Bank may suffer or incur, and the Customer must pay the Bank that amount immediately on written demand.

36 Miscellaneous

36.1 Open an account

If the Bank receives notice (actual or constructive) of any subsequent charge or other interest affecting any Security Interest given in favour of the Bank hereunder or if the continuing nature of any such Security Interest is terminated for any reason, the Bank may open a new account or accounts in the Customer's name but, whether or not the Bank does so, it shall nevertheless be treated as if the Bank had done so at the time when the Bank received or was deemed to have received notice or at the time of termination (as the case may be) and, as from that time, all payments made to the Bank shall be credited or be

treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which the Security Interest is given.

36.2 **GST**

- (1) All payments to be made by the Customer under or in connection with any Trade Service have been calculated without regard to GST.
- (2) If all or part of any such payment is the consideration for a taxable supply for GST purposes then, when the Customer makes the payment:
 - (a) it must pay to the Bank an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
 - (b) the Bank will promptly provide to the Customer a tax invoice complying with the relevant GST legislation.
- (3) Where under any Trade Service a Customer is required to reimburse or indemnify for an amount, the Customer must pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the Bank determines that it is entitled to claim in respect of that amount.

36.3 **Waiver**

The rights that the Bank has under the Transaction Documents cannot be waived except by the Bank giving the Customer written notice waiving the particular right. In particular:

- (1) The Bank does not waive any right that the Bank has in connection with this Agreement merely because the Bank does not exercise it, or does not exercise it as soon as the Bank can; and
- (2) if the Bank exercises a right once or partly, it does not mean that the Bank cannot exercise that right again or other rights.

36.4 **Certificate**

A certificate or statement of account signed by the Bank stating the amount at any time due and payable by the Customer shall be conclusive and binding on the Customer save for manifest error.

36.5 **Assignment**

The Customer may not assign or transfer any of its rights or obligations under this Agreement. The Bank may assign any of its rights to a person in whose favour it has made an assignment of all or any of the Secured Money. The Bank is authorised to disclose to any actual or potential assignee or transferee such information about the Customer, this Agreement, the Trade Services (whether current or otherwise) or such other information as the Bank shall consider appropriate for the purpose of the proposed assignment or transfer.

36.6 **Form of notices**

Any notice, demand or other communication under this Agreement shall be in writing and in English addressed to the Customer at its last known address and may be delivered personally, by leaving it at such address, by post or facsimile transmission or telex and shall be deemed to have been delivered to the Customer at the time of personal delivery or on leaving it at such address or on the second day following the day of posting or on the day of despatch if sent by facsimile transmission or telex. Any notice or communication to

the Bank shall not be effective until actually received by the Bank at its main branch in the Relevant Location or such other place as designated by the Bank and notified to the Customer.

36.7 Clauses and provisions

Each of the clauses and provisions of this Agreement is severable and distinct from the others and if at any time one or more of such clauses or provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

36.8 The Bank

Reference to the Bank in this Agreement shall where the context admits include the Bank's successors and assigns whether immediate or derivative. Any reconstruction, reorganisation or change in the Bank's constitution or the Bank's absorption in or amalgamation with any other person or the acquisition of all or part of the undertaking of the Bank by any other person shall not in any way prejudice or affect the rights of the Bank hereunder.

36.9 Joint and several

If this Agreement is signed by 2 or more persons, all undertakings, agreements, obligations, warranties, liabilities and pledges herein contained or implied on their part are joint and several and shall be construed accordingly, and none of the persons constituting the Customer shall be entitled to any of the rights or remedies, legal or equitable, of a surety as against the Bank until all moneys, obligations and liabilities hereby secured have been repaid.

36.10 Liabilities

The Bank shall be at liberty to release, compound with or otherwise vary or agree to vary the liability of, or to grant time or indulgence to or make other arrangements with, any one or more of the persons constituting the Customer or any other person, without prejudicing or affecting the rights and remedies of the Bank against any other persons constituting the Customer.

36.11 Firms

Where this Agreement is signed on behalf of a firm, all such undertakings, agreements, obligations, warranties, liabilities and pledges of the Customer shall be binding both on the present partners and on the persons from time to time carrying on business in the name of such firm or under the name in which the business of such firm may from time to time be continued, notwithstanding the retirement or death of any partner or the introduction of any further partner.

36.12 Amendments, modifications and supplements

The Bank reserves the right at its sole and absolute discretion to vary, amend, modify or supplement any of the terms hereof at any time to be effective forthwith upon notice to the Customer. Any change shall be notified to the Customer no later than the day on which the change takes effect by notice in writing to the Customer.

- (1) The Customer acknowledges that if the Customer enters into a Trade Service in one currency (for example, Australian Dollars) and the Customer's receivables into an account are in another currency (for example, United States Dollars), the Customer may be subject to an exchange rate risk or loss, and the Customer shall, from time to time, consider the need for and if it considers it necessary shall enter into appropriate mechanism(s) to protect against any adverse currency

movements. The Customer acknowledges that it may contact the Bank to discuss the availability of these mechanisms with the Bank. However, the Bank is under no liability or responsibility (whether in contract, tort or otherwise) and is not to be taken to have accepted any liability or responsibility (whether in contract, tort or otherwise) whatsoever in respect of movement in rates of interest or exchange or any advice, opinions or data rendered or given by any of their officers, employees, agents or other persons representing the Bank, irrespective of whether or not the advice, opinions or data was or is rendered or given at the request of the Customer.

- (3) Advice, opinions or data relating to anticipated movements in rates of interest or exchange are inherently speculative in nature and any reliance by the Customer on the actions, advice, opinion or data of the Bank or any of their officers, employees, agents or other persons representing the Bank is at the Customer's sole risk and expense.

36.14 PPSA

To the extent permitted by the PPSA, the Bank's rights, powers and remedies under the Agreement prevail to the extent they are inconsistent with the provisions of the PPSA.

37 Jurisdiction

- 37.1 This Agreement shall be governed by and construed in accordance with the Laws of the Relevant Location.
- 37.2 The Customer submits to the non-exclusive jurisdiction of the Courts of the Relevant Location but this Agreement may be enforced in the courts of any competent jurisdiction.
- 37.3 This Agreement may be executed in other languages. In case of conflict, the English version shall prevail.
- 37.4 If a process agent is specified in the Facility Letter, service of any legal process on the process agent shall constitute service on the Customer.

38 Further assurances

- 38.1 If the Bank requests, the Customer must, at its cost, immediately do anything (including providing information, obtaining consents or waivers, or executing new documents, amendments to Transaction Documents or consents) which the Bank considers necessary or desirable to:
 - (1) ensure that the Transaction Documents and any Security Interest created under any Transaction Document is not void, voidable, ineffective or otherwise unenforceable by the Bank in accordance with their terms;
 - (2) effect, perfect or complete the provisions of each Transaction Document or any transaction contemplated by it;
 - (3) perfect, preserve and maintain continuous perfection of each Security Interest created under any Transaction Document, including under and in accordance with the PPSA;
 - (4) ensure that, each Security Interest reserved or created as, contemplated by or purported to be reserved or created by any Transaction Document:

- (a) attaches to the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or other personal property, as the case may be, that is intended to be covered by the Security Interest; and
 - (b) has the priority required by the Bank;
- (5) stamp and register each Transaction Document and Security Interest created under any Transaction Document in any relevant jurisdiction (where applicable) and by any person the Bank determines;
 - (6) enable the Bank to prepare and register (including renewal of registration) a financing statement or financing change statement on any register of securities (including, but not limited to, any serial numbers or other details of the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts);
 - (7) enable the Bank to exercise any of the Bank's rights or powers in connection with any Security Interest in favour of the Bank, or to perform any of the Bank's obligations under the PPSA;
 - (8) provide more effective or better security to the Bank over the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or any part of the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or proceeds of these items in any relevant jurisdiction and in a manner not inconsistent with this Agreement with any additional terms reasonably required by the Bank having regard to the nature of that part of the Goods, Pledged Goods, Credit, Master Credit, benefits of relative insurances, Documents, Pledged Instruments or trust receipts or proceeds of these items and the type of additional Security Interest being created;
 - (9) protect, perfect, record or better secure the position of the Bank under each Transaction Document in any relevant jurisdiction; or
 - (10) overcome any defect or adverse effect to this Agreement or any document contemplated by it arising from the PPSA.

38.2 Any new document that the Customer is required to sign under this clause 38 constitutes a Transaction Document.

39 Confidentiality

39.1 Subject to clause 39.2:

- (1) the Bank will not disclose any unpublished information or documents supplied by the Customer in connection with the Transaction Documents that are specifically indicated by the Customer to be confidential and are not in the public domain;
- (2) neither the Bank nor the Customer may disclose:
- (3) any information of a kind referred to in section 275(1) of the PPSA (unless section 275(7) of the PPSA applies); or
- (4) the existence or content of any Transaction Document.

39.2 The Bank and the Customer may disclose confidential information or documents as follows:

- (1) in the case of the Bank, in assigning or enforcing or seeking to assign or enforce a Transaction Document or in a proceeding arising out of or in connection with a Transaction Document or to the extent that disclosure is regarded by the Bank as necessary to protect its interests;
 - (2) if required under a binding order of a Government Agency or any procedure for discovery in any proceedings;
 - (3) if required under any Law or any administrative guideline, directive, request or policy whether or not having the force of Law (other than disclosure of any information of the kind referred to in section 275(1) of the PPSA, unless section 275(7) of the PPSA applies, and except to the extent the requirement can be excluded or limited by contract or by a confidentiality obligation) and, if not having the force of Law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated;
 - (4) as required or permitted by any Transaction Document;
 - (5) to its legal advisers and its consultants;
 - (6) in the case of the Bank, to a ratings agency or to a potential assignee, transferee or sub-participant or to any person with whom the Bank may enter into a transaction, including a securitisation;
 - (7) if required under a binding order of a Government Agency or any procedure for discovery in any proceedings;
 - (8) in any proceedings before a court, tribunal or other Government Agency; or
 - (9) with the prior consent of the other party, which must not be unreasonably withheld.
- 39.3 Except as specified in clause 39.2, the Customer agrees that it will not authorise the disclosure of any information as contemplated by section 275(7)(c) of the PPSA.
- 39.4 Each party consents to any disclosure of information or documents made in accordance with this clause 39.
- 39.5 This clause 39 survives the termination of this document.

40 Contracting out and waiver of notice

- 40.1 Where the Bank has a Security Interest under any Transaction Document, to the extent the Law permits:
- (1) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (a) the Bank need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (b) sections 142 and 143 of the PPSA are excluded;
 - (2) for the purposes of section 115(7) of the PPSA, the Bank need not comply with sections 132 and 137(3) of the PPSA;
 - (3) the Customer waives its right to receive from the Bank any notice required under the PPSA (including a notice of a verification statement);

- (4) if the PPSA is amended after the date of this document to permit the Customer and the Bank to agree to not comply with or to exclude other provisions of the PPSA, the Bank may notify the Customer that any of these provisions is excluded, or that the Bank need not comply with any of these provisions, as notified to the Customer by the Bank; and
- (5) the Customer agrees not to exercise its rights to make any request of the Bank under section 275 of the PPSA, or to authorise the disclosure of any information under that section or otherwise waive any duty of confidence that would otherwise permit non-disclosure under that section.

40.2 This clause 40 does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other clause in any Transaction Documents.

41 Further assurances

41.1 The Customer must promptly provide all information, produce all documents, execute all documents and do all things that the Bank at any time reasonably requires to:

- (1) ensure that, any Security Interest created under, or provided for, by a Transaction Document:
 - (a) attaches to the Secured Property; and
 - (b) is enforceable, perfected and otherwise effective;
- (2) ensure that the Transaction Documents are not void, voidable, ineffective or otherwise unenforceable by the Bank in accordance with their terms;
- (3) effect, perfect, preserve, maintain or complete the provisions of each Transaction Document or any transaction contemplated by it;
- (4) enable the registration (including renewal of registration) by the Bank of any financing statement or financing change statement on the PPSR;
- (5) establish the priority of or reserve or create any Security Interest contemplated by or purported to be reserved or created by any Transaction Document;
- (6) overcome any defect in or adverse effect to any Transaction Document arising from the PPSA;
- (7) enable the Bank to exercise any of its rights or powers or perform any of its obligations under the PPSA; or
- (8) stamp and register each Transaction Document in any relevant jurisdiction and by any person the Bank determines.

41.2 The Customer must:

- (1) comply with the requirements of any request of the Bank under this clause 41 within the time specified by the Bank at the cost and expense of the Customer;
- (2) reimburse the costs of the Bank in connection with anything the Customer is required to do under this clause 41;
- (3) promptly notify the Bank of any change to information that it provides to the Bank under this clause 41;

- (4) take any action necessary to register, perfect, preserve and maintain any Security Interest with the highest possible priority which the Customer holds, or has the benefit of, under or in accordance with the PPSA; and
- (5) allow the Bank, at the Bank's discretion, and at the cost of the Customer, to carry out audits to determine if the Customer has complied with its obligations under clause 41.2(4).

42 PPSA inconsistency

To the extent permitted by the PPSA, the Bank's rights, powers and remedies under each Transaction Document prevail to the extent they are inconsistent with the provisions of the PPSA.

43 Counterparts

Each Transaction Document may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument.