

BANK OF CHINA LIMITED

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INCORPORATED IN CHINA

SYDNEY BRANCH
39-41 York Street
Sydney NSW 2000

APPLICATION FOR BANK GUARANTEE/STANDBY LETTER OF CREDIT

Version 01/2019

To: Bank of China Limited ABN 29 002 979 955, Sydney Branch **(Bank)**

Date: _____ 2019

Customer requesting Guarantee/Standby Letter of Credit:

Name _____

ARBN/ACN/ABN (if applicable) _____

Address _____

Account number _____

Account number _____

(Customer)

Beneficiary of Guarantee/Standby Letter of Credit:

Name _____

ARBN/ACN/ABN (if applicable) _____

Address _____

Account number _____

Account number _____

(Beneficiary)

Form of Guarantee/Standby Letter of Credit:

(in the form annexed to this Application or such other form as the Bank may require or otherwise approve) **(Guarantee/Standby Letter of Credit)**

Purpose of Guarantee/Standby Letter of Credit:

(provide details of the underlying transaction for which the Guarantee/Standby Letter of Credit is to be provided)

(Transaction)

Agreement/Contract/Tender No:

(if applicable provide details of any underlying contract for which the Guarantee/Standby Letter of Credit is to be provided)

(Agreement)

Guaranteed Amount/Maximum Liability:

(insert total amount and currency)

(Face Amount)

Expiry Date:

(Expiry Date)

Expiry Event:

(insert any expiry event for the Guarantee/Standby Letter of Credit or leave blank if not applicable)

(Expiry Event)

Security for the Guarantee/Standby Letter of Credit:

(eg Security over deposit account, real property mortgage)

(Security)

Instrument requested:

Bank Guarantee (use in Australia only)

Bank Guarantee (international use)

Standby Letter of Credit

(Instrument)

1 Request to issue Instrument

The Customer requests the Bank to issue the Instrument to the Beneficiary.

2 Conditions

2.1 In consideration of the Bank agreeing to the Customer's request to provide the Instrument to the Beneficiary, the Customer agrees to the terms set out below.

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2.2 Where the Instrument is a Bank Guarantee:

- (a) it will be issued and prepared in accordance with the ICC Uniform Rules for Demand Guarantees, International Chamber of Commerce Publication No 758 (**ICC Rules**); and
- (b) the ICC Rules apply to the Bank Guarantee subject to the terms set out below.

2.3 Where the Instrument is a Standby Letter of Credit:

- (a) it will be issued and prepared in accordance with the International Standby Practices 1998 as published in the International Chamber of Commerce Publication No 590 (**ISP98**) and, where applicable, the Uniform Customs and Practice for Documentary Credits 600 (UCP 600); and
- (b) the ISP98 applies to the Instrument subject to the terms set out below.

3 Provision of the Instrument

The Customer requests the Bank to:

- (a) deliver the Instrument to the Beneficiary, by:
 - SWIFT;
 - airmail; or
 - hand; or
- (b) issue the Instrument and authorise _____ (bank) to reissue the Bank Guarantee/confirm the Standby Letter of Credit and provide it to the Beneficiary, by:
 - SWIFT;
 - airmail; or
 - hand.

4 Payments under the Instrument

The Customer agrees that:

- (a) upon receipt by the Bank of a written demand for payment and any other documents as may be specified in the Instrument, the Bank may immediately pay to the Beneficiary any amount or amounts, not exceeding the Face Amount stated above, demanded or requested under the Instrument (see the Instrument for further detail relating to payment by the Bank to the Beneficiary);
- (b) the Bank is not required to refer the demand or request to the Customer or obtain the Customer's authority or consent before making a payment under the Instrument;
- (c) the authorisation in clause 4(a) above cannot be revoked by the Customer;
- (d) the Bank will not be responsible for verifying the calculation of any amount or amounts demanded or requested by the Beneficiary;
- (e) the Bank is not required to verify any signature or title on any demand or other document given to the Bank in relation to the Instrument or otherwise make any enquiries as to whether a demand or request has been properly made; and
- (f) the Bank may meet any demand or request which it receives in apparent conformity with the Instrument even where the Customer disputes the validity of the demand or request.

5 Customer's liability

- 5.1 Where the Beneficiary makes a demand or request under the Instrument or the Bank makes any payment under the Instrument, the Customer must pay to the Bank immediately the amount which the Bank is liable to pay or has paid under the Instrument.
- 5.2 At any time in its discretion the Bank may require the Customer to deposit an amount not exceeding the Face Amount of the Instrument into an account in the name of the Customer with the Bank, and the Customer must do so. Amounts standing to the credit of such account may be applied from time to time in or toward satisfaction of any amount due and payable by the Customer to the Bank under this Application. No amount may be withdrawn by the Customer from such account until all amounts which the Customer is or may become actually or contingently liable to pay the Bank under this Application have been paid or satisfied in full.
- 5.3 If any amount is paid or payable under the Instrument by the Bank in any currency then the Customer must pay to the Bank an equivalent amount in the same currency.
- 5.4 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.
- 5.5 If any amount is overdue for payment to the Bank under this Application, the Customer must pay interest on that overdue amount at the following rates:
 - (a) at the Bank's overdue loan interest rate applicable to a loan in the currency in which the amount is due; or
 - (b) such other rate as the Bank may notify the Customer in writing.
- 5.6 The Customer authorises the Bank to debit any account the Customer holds with the Bank for all amounts owing or payable to the Bank under this Application. If that account is denominated in a different currency than that in which the amount is due, the Customer acknowledges that the amount which may be debited to the account is the relevant currency equivalent of the due amount, calculated at the prevailing rate of exchange at the time of the debit, as determined by the Bank.
- 5.7 The Customer agrees that its liabilities to the Bank under this Application are secured by the Security.

6 Termination

- 6.1 The Bank may terminate its liability under the Instrument at any time by paying to the Beneficiary:
 - (a) the Face Amount; or
 - (b) a lesser amount which the Beneficiary may accept in termination of such liability, whether or not the Bank has received any demand or request for payment under the Instrument.
- 6.2 Without limiting any other provision of this Application, upon termination of the Instrument by the Bank under clause 6.1, the Customer will be liable for all amounts which may be paid by the Bank under clause 6.1.
- 6.3 The Customer may procure termination the Instrument by procuring the return of the Instrument by the Beneficiary to the Bank.
- 6.4 The Customer must promptly return the Instrument to the Bank upon its release by the Beneficiary to the Customer.

7 Fees and costs

- 7.1 The Customer agrees to pay or reimburse the Bank on demand for any charges imposed by domestic and overseas banks in connection with the Instrument. This includes, but is not limited to, transfer fees charged by the Bank and overseas banks, the

advising bank's fee, the confirming bank's fee, an instructing party's fee, any handling fee, exchange fee, settlement fee, account opening fee, consultant fee and cable fee.

7.2 The Customer agrees to pay the Bank the fees specified by the Bank from time to time in connection with the Instrument.

8 Indemnity

The Customer indemnifies the Bank against all losses, damages, actions, proceedings, claims, demands, costs or expenses (including legal costs, government charges or taxes) which the Bank may incur or sustain directly or indirectly in connection with the Instrument or this Application. This indemnity is a continuing obligation, separate from the Customer's other obligations to the Bank and survives the payment of amounts under the Instrument. It is not necessary for the Bank to incur expense or make payment before enforcing a right of indemnity.

9 Miscellaneous

9.1 The Bank is not responsible for any loss or delay of the Instrument or related documents during transit, where there is no negligence on the part of the Bank.

9.2 The Customer undertakes to immediately provide the Bank with written notice of any changes to its shareholders, directors or address.

9.3 A certificate signed by a representative of the Bank, stating an amount owing by the Customer under this Application, will be conclusive proof of the amount owing except in case of manifest error.

9.4 This Application, and the liabilities and obligations of the Customer under it, will take effect immediately upon the receipt of this Application by the Bank.

10 Interpretation

10.1 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 body corporate;
- (d) a person includes a natural person, firm, unincorporated association, corporation, partnership, joint venture and a government or statutory body or authority;
- (e) a party to this Application or another agreement or document includes the party's executors, administrators, successors and permitted substitutes (including persons taking by novation) or permitted assigns;
- (f) this Application 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 Application;
- (i) an agreement or document is to the agreement or document as amended, novated, supplemented or replaced, except to the extent prohibited by this Application;
- (j) conduct includes an omission, statement or undertaking, whether or not in writing;
- (k) 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;
- (l) a right includes a benefit, remedy, discretion, authority and power;
- (m) 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;
- (n) payment includes repayment, discharge or satisfaction; and
- (o) money is to Australian dollars, unless otherwise stated.

10.2 A reference to costs and expenses in this Application includes legal costs and expenses on a full indemnity basis.

10.3 Anything that this Application states is to be done by either the Bank or another party is to be done at the Customer's expense.

10.4 'Including' and similar expressions are not words of limitation.

10.5 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.

10.6 Headings and any table of contents or index are for convenience only and do not affect the interpretation of this Application.

10.7 A provision of this Application must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Application or the inclusion of the provision in the Application.

10.8 If an act must be done on a specified day which is not a Business Day (where 'Business Day' means a day that is not a Saturday, Sunday or public holiday in the location of the office of the Bank to which this Application is addressed), it must be done instead on the next Business Day.

10.9 If a party consists of more than 1 person, this Application binds each of them separately and any 2 or more of them jointly.

10.10 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

10.11 A party which is a trustee is bound both personally and in its capacity as a trustee.

10.12 The Customer acknowledges that in addition to the terms of this Application, the Bank's Master Agreement for Trade Services, the provisions of which are incorporated into this Application, governs the transactions completed by this Application. The Customer has read and understood the terms of the Bank's Master Agreement for Trade Services and agrees to be bound by those terms.

10.13 To the extent of any inconsistency between the terms and conditions of this Application and the terms and conditions of any other agreement or document entered into by Customer with the Bank in connection with trade facilities of the type referred to in this Application the terms and conditions most favourable to the Bank will prevail.

Applicant:

Name

ARBN/ACN/ABN (if applicable)

Address

Account number

Signature of Applicant

[Execution by corporation:]

Signed for and on behalf of

.....

ACN.....

by its authorised representative in the presence of:

.....
Witness

.....
Authorised Representative

.....
Name of Witness

.....
Name of Authorised Representative

[For an individual:]

Signed sealed and delivered as a deed by **[Name of Customer]** in the presence of:

.....
Signature of witness

.....
Name of witness (BLOCK LETTERS)

.....
Address of witness