

# GENERAL TERMS AND CONDITIONS (“GENERAL TERMS”)

*THIS IS AN IMPORTANT DOCUMENT.*

These General Terms set out the terms and conditions upon which Industrial Bank Co., Ltd (A joint stock company incorporated in P.R.C with limited liability), Hong Kong Branch (the "**Bank**", which expression shall include all its offices wherever situated, its successors and assigns) would provide / continue / renew credit and other facilities to one or more customers (collectively, the "**Customer**"). The Customer is advised to read and understand these General Terms carefully before accepting any credit or facilities.

The definitions which shall apply to these General Terms are set out in Clause 31.

## 1. REPAYMENT ON DEMAND AND CANCELLATION

- 1.1 In respect of any facility which is made available on an uncommitted basis, the Bank shall have the overriding right at any time and at its sole discretion, to (a) ***demand immediate repayment of all outstanding indebtedness, liabilities and/or obligations (including interest and default interest) due, owing, incurred and/or payable by the Customer (whether as principal or surety, alone or jointly with any other person, actual or contingent) to the Bank in respect of all credit and other facilities; and/or*** (b) terminate or cancel all or any of credit and other facilities and accommodation granted to the Customer by the Bank.
- 1.2 Without prejudice to the generality of Clause 1.1 and any of the Bank's rights, powers or remedies, the Bank shall be entitled to (a) make a demand for immediate repayment of the Customer's indebtedness, liabilities and/or obligations and/or (b) terminate or cancel all or any part of the credit and other facilities and accommodation granted to the Customer, on the occurrence of an Event of Default.
- 1.3 The Customer shall, immediately upon request by the Bank, execute and deliver to the Bank promissory note(s) payable on demand or make other methods of payment in the form approved by the Bank for the total amount owing and/or payable to the Bank by the Customer.
- 1.4 Without prejudice to Clause 1.1, if, at any time, it is or will become unlawful in any applicable jurisdiction for the Bank to perform any of its obligations under the credits, facilities or accommodation or to fund any credit, facility or accommodation, the Bank shall notify the Customer of the same and the credits, facilities or accommodation of the Bank shall be immediately cancelled and the Customer shall repay all the loans and amounts in full on the date specified by the Bank in the notice delivered to the Customer.

## 2. PAYMENT & PREPAYMENT

- 2.1 (a) All payments by the Customer to the Bank shall be paid in immediately available funds free and clear of any withholdings or deductions for or on account of any present or future taxes, duties or other similar charges.  
(b) Any fee or charge referred to in these General Terms or any related documents is exclusive of any value added tax, goods and services tax or any other tax which might be chargeable in connection with that fee or charge. If any value added tax, goods and services tax or any other tax is so chargeable, it shall be paid by the Customer at the same time as it pays the relevant fee or charge. For the avoidance of doubt, if the Customer is for any reason obliged to make any deduction or withholding for taxes, duties or other charge from any payment to the Bank, it will pay such additional amounts to the Bank as will ensure that the Bank receives the amount it would have received but for such deduction or withholding.
- 2.2 Unless otherwise agreed by the Bank in writing, all payments by the Customer shall be made in the currency (or currencies) in which the relevant amount owed is denominated.
- 2.3 All monies received by the Bank from the Customer may be applied by the Bank to such account or liability of the Customer as the Bank may from time to time in its absolute discretion conclusively determine.
- 2.4 Unless otherwise agreed with the Bank, the Customer shall compensate the Bank for any costs, loss and expenses (including fund breakage costs) that the Bank may suffer or incur in connection with any prepayment of liabilities by the Customer under any Relevant Document.

## 3. SECURITY

- 3.1 The Bank holds all assets of the Customer (including those assets held to the Bank's order or for account of the Customer (whether for safe custody, collection, security or for any specific purpose or generally)) as continuing security for the payment and discharge of all the Customer's obligations to the Bank.
- 3.2 The Bank may (at any time, without prior notice to the Customer or any other person and in such manner as the Bank thinks fit) sell, dispose of or otherwise deal with any of the Security Assets.
- 3.3 The Bank may apply the net proceeds of any sale, disposition or dealing pursuant to Clause 3.2 in or towards discharge of the Customer's obligations to the Bank.
- 3.4 The Customer shall maintain insurance cover against losses or damages with financially sound and reputable insurers acceptable to the Bank with respect to the Security Assets.
- 3.5 The Customer shall, immediately upon request by the Bank:

- (a) execute and deliver to the Bank one or more security documents in form and substance satisfactory to the Bank over such of the Customer's assets as the Bank specifies in any such request;
  - (b) register or procure the registration of the Security Interests created under these General Terms with the appropriate authority(ies); and
  - (c) provide such further security in such form as may be required by the Bank and in amounts and/or values sufficient in the opinion of the Bank to secure any of the Customer's obligations to the Bank.
- 3.6 The Bank may at any time and from time to time conduct a valuation or assessment of the assets referred to in Clause 3.1 and the cost of such valuation or assessment shall be for the account of the Customer.
- 3.7 If at any time the Bank is of the opinion that the value of the Security Assets has fallen below the security margins stipulated by the Bank, or in the absence of such stipulation, below the value at the time the credit and other facilities were granted, the Bank shall be entitled:-
- (a) to require the Customer to reduce its liabilities to the Bank by such extent and in such manner as the Bank may determine;
  - (b) to withhold further disbursement under the credit and other facilities;
  - (c) to cancel or reduce the credit and other facilities;
  - (d) to require the Customer to furnish to the Bank additional assets or other securities as shall be satisfactory to the Bank; and/or

4. to realise and set off the Security Assets against the Customer's liabilities to the Bank. **INTEREST AND COMMISSION**

- 4.1 The Customer shall pay commission, interest, fees and charges at such rates as may from time to time be agreed between the Bank and the Customer or, in the absence of an express agreement, as the Bank may specify in writing.
- 4.2 The Bank may charge interest on any sum(s) outstanding, owing and/or payable by the Customer from time to time. In the absence of express agreement, such interest shall accrue from day to day and shall be calculated on the basis of actual number of days elapsed and a 365 day year or such other period as may be appropriate or customary having regard to the currency (or currencies) in which the relevant facility (or facilities) are made available, and be due and payable at such times and shall be compounded in such manner as the Bank may determine in its absolute discretion from time to time. The Bank reserves the right to change the basis of calculation of interest at any time in accordance with market practice.
- 4.3 The Bank may charge default interest (both before and after judgment and at such rate or rates as the Bank may reasonably determine) on any moneys not paid by the Customer when due. The obligation of the Customer to pay default interest on overdue amounts shall continue until all sums owing and/or payable by the Customer to the Bank have been irrevocably paid in full. Such default interest shall be due and payable to the Bank on demand.
- 4.4 If the Bank (in its absolute discretion) determines that adequate and fair means do not exist for ascertaining the interest rate for any interest period under any facility or that the currency to be made available under any facility is not available in sufficient amounts in the ordinary course of business for any interest period under any facility or that by reason of circumstances affecting the relevant interbank market generally, it is impracticable for the Bank to fund or continue to fund any facility during such interest period, the Bank shall notify the Customer and, if the Bank so requires, the Bank and the Customer shall negotiate in good faith with a view to arriving within a period of thirty (30) days (the "**Negotiation Period**") at an acceptable alternative arrangement, failing which the Bank's obligations under such facility shall cease and the Bank may require the Customer to promptly prepay such facility together with accrued interest thereon to the date of prepayment (calculated at the rate or rates determined by the Bank) and all other sums payable by the Customer under such facility. In such case, the Customer shall also reimburse to the Bank, such amount as may be determined by the Bank to be necessary to compensate it for the increased cost (if any) of maintaining such facility during the Negotiation Period until such prepayment.

**5. DRAWING**

If the Bank permits the Customer to draw against funds to be collected or transferred from any account(s), the Customer shall on demand reimburse the Bank in full the amount so drawn if the Bank does not receive the funds in full at the time when the Bank ought to have received the same or if, after the Bank has accepted the transfer, the Bank is prevented from collecting or freely dealing with the funds in accordance with usual banking practice.

**6. CHEQUE/BILL DISCOUNTING**

- 6.1 If the Bank agrees to enter into discounting arrangements with the Customer or into any arrangements involving the purchase by the Bank of bills of exchange and/or other negotiable instruments and cheques, the Customer agrees to guarantee the full payment together with interest calculated at the agreed rate at maturity of all bills of exchange or other negotiable instruments and cheques discounted or purchased by the Bank under such arrangements.
- 6.2 The Customer shall, immediately upon request by the Bank, enter into or procure the entering into of such further guarantee(s) and/or indemnity(ies) in connection with the arrangement referred to in Clause 6.1 above.
- 6.3 The Customer waives the requirement for the Bank to give notice of dishonour and/or to note and protest any dishonoured cheques or negotiable instruments to which the Customer is a party and of which the Bank is holder.

**7. REPRESENTATIONS**

7.1 ***General Representations and Warranties: The Customer represents and warrants to the Bank that:***

- (a) the Customer is the sole legal and beneficial owner of the Security Assets free from any Security Interests (other than Security Interests created in favour of the Bank);
- (b) the Customer has not sold or disposed of all or any of its right, title and interest in and to the Security Assets, nor agreed to do any such thing;
- (c) the Customer has the legal capacity and powers to execute and perform the Relevant Documents;

- (d) the entry into and performance by it of, and the transactions contemplated by, the Relevant Documents does not and will not (i) contravene any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which the Customer is subject, (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or instrument to which the Customer is a party or is subject or by which it or any of its property is bound, (iii) result in any indebtedness becoming due and payable prior to its stated maturity, or (iv) result in the creation or imposition of or oblige the Customer to create any charge or other encumbrance on its undertaking, assets or rights;
- (e) every consent, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by the Customer to authorise, approve or required by the Customer in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of any Relevant Document and the performance by the Customer of its obligations under any Relevant Document has been obtained or made and is in full force and effect and there has been no default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of the same;
- (f) the Customer has received independent professional advice in respect of and understands the nature of the obligations assumed by it under the Relevant Documents;
- (g) the Relevant Documents have been validly created and constitutes and will continue to constitute valid and legal, binding and enforceable obligations of the Customer, enforceable in accordance with its terms;
- (h) no steps have been taken or legal proceedings started nor has any order been made or petition presented or resolution passed for the winding-up or bankruptcy of the Customer and no distress, execution or other process has been levied on any of the assets of the Customer, nor is the Customer unable to pay its debts as they fall due;
- (i) the Customer is not in default in respect of any material financial commitment or obligation including but not limited to any guarantee, indemnity, bond or similar obligation or in breach of any arrangement or statutory or other legal requirement to an extent or in a manner which might have a material adverse effect on the business, assets or financial condition of the Customer taken as a whole;
- (j) no taxes, levies, imposts or duties of whatever nature are imposed by withholding or otherwise on any payment to be made by the Customer under the Relevant Documents or are imposed on or by virtue of the execution or delivery by it of the Relevant Documents;
- (k) the Customer has complied with all taxation laws in all material respects in all jurisdictions in which it is subject to taxation and has paid all taxes due and payable by it; no material claims are being asserted against the Customer with respect to taxes;
- (l) the Customer is generally subject to civil and commercial law and to legal proceedings and neither the Customer nor any of its assets or revenues is entitled to any immunity or privilege (sovereign or otherwise) from any set-off, judgment, execution, attachment or other legal process;
- (m) the obligations of the Customer under any loan, facility or accommodation made available by the Bank will at all times rank at least *pari passu* with all the present and future unsecured and unsubordinated obligations of the Customer;
- (n) no Security Interests exist over all or any of the present or future revenues or assets of the Customer other than those created in favour of the Bank or consented by the Bank in writing;
- (o) the Customer is acting as principal for its own account and not as agent or trustee or in any other capacity on behalf of any third party;
- (p) each security document in relation to these General Terms in favour of the Bank creates the Security Interests it purports to create and is not liable to be amended or otherwise set aside on its liquidation or otherwise;
- (q) the choice of governing law of each Relevant Document will be recognized and enforced in the jurisdictions in which the Customer was incorporated or is resident or domiciled or where the Security Assets are situated and any judgment or arbitration award obtained in relation to each Relevant Document will be recognized and enforced in those jurisdictions;
- (r) all information supplied in writing to the Bank by or on behalf of the Customer in respect of the Customer under or in connection with the Relevant Documents is true, complete and accurate in all material respects and not misleading or does not omit any material facts and all reasonable enquiries have been made to verify the facts contained in the Relevant Documents and there are no other facts the omission of which would make any fact or statement therein misleading;
- (s) the Customer is not a resident for tax purposes in the United States of America and none of whose payments under the Relevant Documents are from sources within the United States of America for US federal income tax purposes; and
- (t) neither the Customer nor (where the Customer is a corporation or company) any of its [affiliates / subsidiaries], nor (to the knowledge of the Customer) any director or officer, or any employee, agent of the Customer or any [affiliate / subsidiary] of the Customer is an individual or entity that is, or is owned or controlled by persons that are Sanctioned Persons.

**7.2 Representations and Warranties given by corporate Customer: The Customer (if it is a corporation or company) represents and warrants to the Bank that:**

- (a) the Customer is a limited liability company duly incorporated and validly existing under the laws of its place of incorporation and has full power, authority and legal right to own its property and assets and to carry on its business as it is presently being carried on;
- (b) the Customer has taken all necessary corporate, shareholder and other action to authorise the execution, delivery and performance of the Relevant Documents, and no limitation on the powers of the Customer will be exceeded as a result of the Relevant Documents;
- (c) the entry into and performance by it of, and the transactions contemplated by, the Relevant Documents does not and will not (i) contravene or conflict with its constitutional documents, or (ii) result in the creation or imposition of or oblige the Customer or any of its subsidiaries to create any charge or other encumbrance on the undertaking, assets, rights or revenues of it or any of its subsidiaries;
- (d) neither the Customer nor any of its subsidiaries is involved in any litigation arbitration or other proceedings of a litigious nature, nor to its knowledge is any such litigation, arbitration or proceedings pending or threatened

which has or could have a material adverse effect on the business assets or financial condition of the Customer and its subsidiaries taken as a whole; and

- (e) there has been no material adverse change in the financial condition of the Customer and its subsidiaries taken as a whole as shown in the latest audited consolidated accounts of the Customer produced to the Bank since the date of such accounts and in particular the net asset position of the Customer and its subsidiaries taken as a whole as shown in such accounts has not materially deteriorated nor has it or any of its subsidiaries entered into any material burdensome agreement and such accounts (and the notes thereto) give a true and fair view of the state of affairs of the Customer as at the date of such accounts.

7.3 **Representations and Warranties given by individual Customer:** The Customer (if he is an individual, or the sole proprietor (where the Customer is a sole proprietorship) or each individual partner (where the Customer is a partnership) represents and warrants to the Bank that:

- (a) the Customer is:
  - (i) not a minor; and
  - (ii) of sound mind.
- (b) no order has been made or receiver appointed in respect of the Customer under the Mental Health Ordinance (Cap. 136 of the Laws of Hong Kong) nor has any step or procedure been taken in any other jurisdiction which would restrict the ability or legal capacity of the Customer to enter into the Relevant Documents or would require the approval of a third party or authority;
- (c) prior to execution of the Relevant Documents, the Customer has been informed by the Bank:
  - (i) that he has the choice not to proceed with the transaction in connection with the Relevant Documents;
  - (ii) to seek independent legal advice in relation to his obligations and liabilities under the Relevant Documents;
  - (iii) any Security Interest created in favour of the Bank is a continuing security and his liabilities will not be extinguished until all sums owing and/or payable to the Bank have been fully and irrevocably paid and discharged;
  - (iv) that his liabilities under the Relevant Documents, unless otherwise specified, are payable on demand;
- (d) the Customer is not involved in any litigation arbitration or other proceedings of a litigious nature, nor to its knowledge is any such litigation, arbitration or proceedings pending or threatened which has or could have a material adverse effect on the assets or financial condition of the Customer; and
- (e) there has been no material adverse change in the financial condition of the Customer since last disclosed to the Bank.

7.4 The representations and warranties in Clauses 7.1, 7.2 and 7.3 (where applicable) shall be repeated by the Customer at all times when the Bank has any commitment, obligation or liability under or pursuant to any Relevant Document or there are any sums owing and/or payable by the Customer to the Bank under any loan, facility or accommodation.

7.5 The Customer acknowledges that the Bank has provided or will provide any loan, facility or accommodation in reliance on the representations and warranties in Clauses 7.1, 7.2 and 7.3 (where applicable).

## 8. UNDERTAKINGS AND FURTHER ASSURANCES AND NEW CIRCUMSTANCES

8.1 The Customer undertakes with the Bank that it shall, and use its best endeavours to procure any third party to, as applicable:

- (a) (if the Customer is a corporation, company, partnership or sole proprietorship) promptly provide the complete and updated constitutional documents, partnership agreement or business registration certificate (as applicable) of the Customer together with any amendments made from time to time;
- (b) (if the Customer is a corporation, company or partnership) supply to the Bank certified true copies of its latest (where applicable, audited) financial statements (consolidated in the case of the Customer having subsidiaries) and such other information concerning the Customer as the Bank may reasonably request;
- (c) (if the Customer is a corporation, company or partnership which is not listed) promptly notify the Bank upon any change in the shareholding or control or partners of the Customer;
- (d) (if the Customer is a listed company) promptly notify the Bank upon any change in the shareholding of its substantial shareholders (who holds 10% or more of the voting power at the Customer's general meeting) or control of the Customer;
- (e) promptly notify the Bank and supply any information regarding any significant changes in the financial condition or any change in the character, extent or nature of the business of the Customer;
- (f) promptly notify the Bank upon becoming aware of the occurrence of any events or circumstances which may adversely affect the financial condition of the Customer or the Customer's ability to discharge its payment obligations or perform its other obligations under these General Terms or under any agreement or in respect of any transaction;
- (g) upon becoming aware of any pending or potential claims, proceedings or actions against the Customer, promptly deliver to the Bank details of any litigation, arbitration or administrative proceedings which are current, threatened or pending and which might, if adversely determined, have a material adverse effect on it;
- (h) promptly upon become aware thereof, notify the Bank of the occurrence of any Event of Default or Potential Event of Default;
- (i) not convey, assign, dispose of or transfer the whole or any part of the Security Assets without the prior written consent of the Bank;
- (j) not to create or permit to exist any Security Interest of any nature on or over any of the Security Assets or the relevant proceeds in favour of any person other than the Bank;
- (k) comply with all applicable laws in all relevant jurisdictions, in particular, if any loan, facility or accommodation granted by the Bank is secured by a standby letter of credit or other security/credit support from a PRC issuer; no amount of such loan, facility or accommodation may be remitted to the PRC;
- (l) not do, cause or permit to be done anything which may in the opinion of the Bank, in any way depreciate, jeopardise or otherwise prejudice the value to the Bank (whether monetary or otherwise) of the whole or any part of the Security Assets without the prior written consent of the Bank;

- (m) obtain and do all that is necessary to maintain in full force, validity and effect all governmental and other approvals, authorities, licenses, filings, notifications and consents required in connection with the Relevant Documents, and do or cause to be done all other acts and things necessary or desirable for the performance of all the obligations of the Customer under or pursuant to the Relevant Documents;
- (n) sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things as the Bank shall require from time to time whether to enable the Bank to obtain the proceeds of the Security Assets or otherwise in connection with the Relevant Documents;
- (o) take such steps as the Bank may require for the exercise of its rights and remedies and/or enforcement of its Security Interests in respect of the Security Assets;
- (p) perfect and preserve and to ensure the Bank obtains the full benefit of the Bank's rights, powers and interests under these General Terms and any security given to secure any moneys, liabilities or obligations owing and/or payable by the Customer to the Bank from time to time;
- (q) give effect to the Relevant Documents and any other agreements or transactions contemplated by the Relevant Documents;
- (r) the Customer will not (and the Customer shall ensure no other person will), directly or indirectly, use the proceeds made available under any credit, facility or accommodation pursuant to the Relevant Documents, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person, (i) to fund or facilitate any activities or business of or with any person, or in any country or territory, that, at the time of such funding, is a Sanctioned Person or Sanctioned Jurisdiction, or (ii) in any other manner that would result in a violation of Sanctions by any person (including any person participating in the credit, facility or accommodation, whether as lender, advisor, investor or otherwise);
- (s) the Customer must not give an instruction for any illegal or fraudulent purpose or which, to the best of its knowledge or belief (having conducted reasonable due diligence), would cause the Bank to breach any Sanctions imposed by any Sanctions Authority or the law of any jurisdiction affecting the Bank.
- (t) the Customer shall (and shall procure its subsidiaries, corporate guarantors and corporate security providers will) maintain corporate existence and conduct their businesses in proper and efficient manner and to comply with all laws, regulations, authorisations, agreements and obligations applicable to them and pay all taxes imposed on them when due;
- (u) the Customer shall (and maintain procure its subsidiaries, corporate guarantors and corporate security providers will) maintain insurance with financially sound and reputable insurers with respect to their material assets of an insurable nature against such risks and in such amounts as are normally maintained by persons carrying on the same or similar kind of business;
- (v) the Customer shall not (and shall ensure that no guarantor or security provider will) (i) materially change its line of business without the Bank's prior written consent; (ii) sell, transfer or otherwise dispose of any material parts of its assets without the Bank's prior written consent; and (iii) enter into any amalgamation, demerger, merger or corporate reconstruction, other than those as permitted under the Relevant Documents;
- (w) the Customer shall not enter into any arrangement, agreement or obligation which might materially and adversely affects its financial or other conditions; and
- (x) the Customer shall not merge or consolidate with any other entity or take any step with a view to dissolution, liquidation or winding-up.

8.2 The Customer confirms that it does not have any relationship with any of the directors, employees or controller of the Bank or any other member of the Industrial Bank Group. If any credit or other facilities granted by the Bank to the Customer are secured by any guarantee or security provided by any third party (the "**Security Provider**"), the Customer confirms that the Security Provider is not so related. The Customer further agrees and undertakes that if the foregoing is not true and correct or it or any Security Provider becomes related with any of the directors, employees or controller of the Bank or any other member of the Industrial Bank Group, the Customer shall promptly notify the Bank in writing.

8.3 If due to any change in (or in the interpretation of) any applicable laws, regulations, directives or requirements of any authority (including the introduction of or change in any reserve or liquidity requirements), the Bank's cost of maintaining any facilities granted by the Bank to the Customer is increased or the Bank's return from such facilities is decreased, the Customer shall pay the Bank such reasonable sum as will compensate the Bank for such increase or decrease, provided that the Bank shall notify the Customer of such increase or decrease as soon as the Bank is aware of the same and shall give information to the Customer on the calculation of such increase or decrease.

8.4 If at any time (a) it becomes unlawful for the Bank to make, fund or allow to remain outstanding any of the facilities granted by the Bank to the Customer or (b) it is or will become unlawful for the Customer to perform or comply with any of the Customer's obligations under such facilities, then (i) the Bank shall be entitled to cancel the facilities and (ii) if the Bank so reasonably requires, the Customer shall on such date as the Bank shall specify repay all outstanding liabilities under the said facilities (together with accrued interest) and/or pay to the Bank such amount equal to the contingent or future liabilities under such facilities.

## 9. EVIDENCE AND CALCULATIONS

9.1 Any certificate or determination of the Bank as to any rate of interest, rate of exchange or any other amount payable under these General Terms is, in the absence of manifest error, conclusive evidence of the matters to which it relates and shall be binding on the Customer.

9.2 The Bank may, at its discretion, record telephone or other oral instructions in writing and/or by tape recording and/or any other method. The Customer expressly agrees that if a dispute arises at any time in relation to the contents of any such instructions, then, in the absence of any manifest error, the Bank's record thereof, or a transcript of the same certified by any of the Bank's officers, shall be conclusive evidence as to the content and nature of such instructions and shall be binding on the Customer.

## 10. FOREIGN CURRENCY TRANSACTIONS

- 10.1 **Foreign Exchange Transaction:** Each foreign exchange transaction (spot, forward or otherwise) entered into between the Customer and the Bank will be subject to the general practices of the relevant foreign exchange market and the Bank's applicable rules and regulations prevailing from time to time. Each such foreign exchange transaction will also be subject to any specific terms and conditions agreed between the Bank and the Customer in relation thereto from time to time which, in the event of any inconsistency with the terms of these General Terms, will prevail over such terms of these General Terms.
- 10.2 **Currency conversion:** If in any foreign currency transaction entered into between the Bank and the Customer, the Bank has made a payment in one currency (the "**first currency**"), the Customer shall settle such transaction on the agreed date (the "**Settlement Date**") in such other currency (the "**second currency**") as is agreed between the Bank and the Customer by paying to the Bank an amount in such second currency equivalent to the amount paid by the Bank. The amount shall be calculated at the Bank's spot rate of exchange prevailing at such time on the Settlement Date as the Bank may in its absolute discretion determine for the purchase of the first currency with the second currency.
- 10.3 **Payments on behalf of the Customer:** In any foreign currency transaction entered into by the Bank on behalf of the Customer, the Bank is not obliged to pay an amount in one currency to or to the order of the Customer on any agreed Settlement Date unless and until the Bank has received from the Customer on the Settlement Date the agreed amount in such other currency as may be agreed between them.
- 10.4 **Approvals:** The Customer shall obtain all necessary authorisations for any foreign currency transaction with the Bank and the Customer agrees that performance of the Bank's obligations in respect of such transaction is at all times subject to compliance in such manner as the Bank may think fit with any exchange control or other restrictions or rules from time to time in force in any relevant jurisdiction.
- 10.5 **Currency indemnity:**
- (a) If the Bank receives an amount in respect of the Customer's liability to the Bank or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "**contractual currency**") in which the amount is expressed to be payable:
    - (i) the Customer shall fully indemnify the Bank as an independent obligation against any loss or liability arising out of or as a result of the conversion into the contractual currency;
    - (ii) if the amount received by the Bank, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency, the Customer shall forthwith on demand pay to the Bank an amount in the contractual currency equal to the deficit; and
    - (iii) the Customer shall pay to the Bank forthwith on demand any exchange costs and taxes payable in connection with any such conversion.
  - (b) The Customer waives any right it may have in any jurisdiction to pay any amount owing to the Bank in a currency other than that in which it is expressed to be payable.
- 10.6 **RMB transactions:** Unless otherwise agreed by the Bank in writing, no cash transactions may be effected in RMB. Any transaction which involves the making of a payment in RMB, unless the Bank otherwise agrees, may only be made, or as the case may be, settled, either (a) by electronic transfer of such amount in RMB or (b) (at the discretion of the Bank) by payment in cash or electronic transfer of an equivalent amount in HK Dollars or such other currency as the Bank may select (converted into HK Dollars or such other currency at the Bank's spot rate of exchange between such currencies).

## 11. LIMITATION ON LIABILITY AND INDEMNITY

- 11.1 The Bank may take, and may instruct (or be instructed by) any other member of the Industrial Bank Group to take, any action ("**Compliance Action**") which the Bank or such other member of Industrial Bank Group, in the Bank's sole discretion, consider appropriate for the purposes of preventing crime and/or acting in accordance with relevant laws, regulations, sanction regimes, international guidance or procedures of relevant regulatory or industry body (collectively "**Compliance Rules**"). The Bank reserves the right not to effect payment to the Customer under any export credit negotiation or confirmation as a result of a Compliance Action. If the Bank becomes aware that any payment made to the Customer under an export credit negotiation or confirmation contravenes the Compliance Rules, the Bank shall have the right to recoup such payment from such Customer.
- Neither the Bank nor any member of the Industrial Bank Group will be liable to the Customer or any other person for any loss (whether direct or consequential and including, without limitation, loss of profit or interest) or damage suffered by the Customer or any other person arising out of a Compliance Action or the exercise of any of the Bank's right under this Clause.
- 11.2 The Bank shall not be liable to the Customer or any other person for any act, delay or failure to act, on the part of the Bank or any other person, in respect of any accommodation, Documentary Credits, Documents, Goods, Services or Obligations (as defined in Schedule 1 to these General Terms) or otherwise for the condition, quantity or value of any Goods unless due to the gross negligence or wilful default of the Bank, its officers or employees.
- 11.3 The Customer shall fully indemnify the Bank against all costs, expenses or losses, claims, demands and other liabilities reasonably incurred by the Bank in connection with these General Terms or any transactions contemplated by these General Terms, other than those liabilities or losses arising directly from the Bank's gross negligence or wilful default.
- 11.4 The Bank shall be entitled to employ debt collecting agents to collect any sum due but unpaid by the Customer after demand. Without prejudice to the generality of Clause 11.3, the Customer agrees, and acknowledges that the Customer has been warned, that the Customer shall indemnify and keep the Bank indemnified on a full indemnity basis against all costs and expenses which the Bank may incur and notify to the Customer in the employment of debt collecting agent(s).

11.5 In respect of any individual Customer to whom the Code of Banking Practice issued jointly by the Hong Kong Association of Banks and the DTC Association applies, any indemnity as to costs and expenses in these General Terms shall be construed so as to be limited to costs and expenses of a reasonable amount and reasonably incurred.

## **12. EXONERATION**

12.1 The Bank shall not be liable to the Customer for any action taken or not taken by it under these General Terms unless directly caused by the Bank's gross negligence or wilful misconduct.

12.2 Notwithstanding that the Customer may have given instructions to the contrary, the Bank shall not be liable to the Customer for any loss or damage which may be caused by the Bank acting in accordance with applicable laws, regulations or rules (including rules and regulations of the various payment systems), or with the terms of the Bank's agreements with other banks or financial institutions regarding the transaction of business with those banks or institutions.

12.3 The Customer acknowledges and agrees that, without giving any reason and without any liability, the Bank may delay or decline to act on any instruction of the Customer's and/or its authorised persons if the Bank thinks in its sole discretion that it is practicable or reasonable to do so, including complying with any applicable laws or any Sanctions.

12.4 Without prejudice to any other part of these General Terms, the Bank may refuse, and will not under any circumstances be liable for any losses of the Customer to the fullest extent permitted by law in connection with its refusal to act on any instruction if accepting or acting upon any instruction would cause a breach of any applicable law or any Sanctions.

## **13. FEES AND EXPENSES**

13.1 The Customer shall forthwith upon demand pay to the Bank handling fees, arrangement fees, commission fees, commitment fees and other fees as the Bank may determine and charge to the Customer at such rates and on such terms notified by the Bank from time to time.

13.2 The Customer shall pay to Bank, immediately on demand, all costs and expenses (including legal fees of both internal and external legal advisers on a full indemnity basis and out-of-pocket expenses) incurred in connection with the negotiation, preparation, execution, implementation, enforcement or perfection or preservation of rights under any Relevant Document or any security provided by the Customer or any third party in respect of the Customer's obligations to the Bank.

## **14. ASSIGNMENT**

14.1 These General Terms and any other Relevant Document between the Bank and the Customer shall enure to the benefit of the Bank and its successors, assignees and transferees and shall be binding upon the Bank and the Customer and their respective successors and permitted assignees and transferees. The Customer shall not assign or transfer any of its rights, interests and/or obligations under these General Terms or any other Relevant Document (including any facility letter and any security documents to which the Customer is a party) in the absence of the prior written consent of the Bank.

14.2 The Bank may at any time upon written notice to the Customer, assign and/or transfer all or any part of its rights and/or obligations under these General Terms or any other Relevant Document (including any facility letter and any security documents to which the Customer is a party) to any third party and for such purposes, the Bank shall be entitled to make disclosure on a confidential basis of information about the Customer and any Relevant Document (including any facility letter and any security documents to which the Customer is a party). The Customer hereby undertakes to take all necessary actions, and execute all documents reasonably required by the Bank in connection with any such assignment or transfer or refrain from taking such action as the Bank may reasonably require.

14.3 The Customer's obligations under these General Terms will not be affected by any change in the name or constitution of the Bank or any successor, assignee or transferee.

14.4 The Bank may at any time grant participation, purchase insurance cover and/or enter into risk, credit, derivative, hedging or similar instructions (including collateralized debt obligation) in respect of any of its rights, benefits and obligations under these General Terms or any Relevant Document.

## **15. WAIVERS**

The rights of the Bank under these General Terms:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

## **16. SUSPENSE ACCOUNT**

16.1 Notwithstanding any provision in these General Terms, any amount received or recovered by the Bank in respect of any sum payable by the Customer under or in connection with these General Terms may be placed by the Bank to the credit of a separate or suspense account in order to preserve the Bank's rights to prove for the full amount of the Bank's claims against the Customer or any third party in the event of any proceedings in or analogous to bankruptcy, insolvency, winding-up, liquidation or composition in respect of any amount owed and/or payable to the Bank.

16.2 The Bank may at any time and from time to time apply all or any monies held in any separate or suspense account in or towards satisfaction of such obligation or liability of the Customer as the Bank may, in the Bank's absolute discretion, from time to time, conclusively determine.

## 17. SET-OFF AND LIEN

- 17.1 The Bank is hereby irrevocably and unconditionally authorised, without prior notice to the Customer or to any other person, at any time, to:
- (a) set off and appropriate and apply any credit balance of the Customer on any account(s) (whether held singly or jointly with others) with the Bank in or towards satisfaction of any sum(s) then due by the Customer to the Bank under these General Terms or any agreement in respect of any facilities from time to time granted to the Customer; and
  - (b) combine or consolidate all or any of the then existing accounts of the Customer or any other person with the Bank to which the Customer may be beneficially entitled (whether held singly or jointly with others or whether a deposit, savings or current account or an account of any other nature whatsoever and whether subject to notice or not and whether matured or not).
- 17.2 If the obligations referred to in Clause 17.1 (a) are in different currencies, the Bank is authorised to convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- 17.3 If any of the obligations referred to in Clause 17.1 (a) is unliquidated or unascertained, the Bank may set off an amount estimated by it in good faith to be the amount of that obligation.
- 17.4 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 and apply the net proceeds thereof in or towards discharge or satisfaction of any moneys, liabilities or obligations owing and/or payable by the Customer to the Bank.

## 18. DATA PROTECTION

- 18.1 Any personal data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486, Laws of Hong Kong) (“**PDPO**”)) which the Customer provides to the Bank shall be treated in the manner provided for in the Bank’s notification given to the Customer from time to time in accordance with the PDPO or the Code of Practice of Consumer Credit Data (“**Code**”) or other codes or guidelines issued in relation to the PDPO (including but not limited to the Banks’ *The Personal Data (Privacy) Ordinance – Personal Information Collection Statement* (“**PICS**”)) and the terms of Clause 19 of these General Terms. In the event of any inconsistency between the PICS and Clause 19, the PICS shall prevail.
- 18.2 The Customer acknowledges and agrees that the Bank may disclose and transfer from time to time all information in connection with these General Terms or other information in respect of the Customer’s accounts and business with the Bank, provided to the Bank by the Customer or otherwise known to the Bank (including personal data) (“**Customer Information**”) to the following persons (where applicable):
- (a) its head office or any other branch, office or unit or any holding company, subsidiary, related company or associate or any other member of the Industrial Bank Group;
  - (b) any provider of any guarantee, indemnity, Security Interests or other credit support in respect of the Customer’s obligations under these General Terms or any other agreement between the Bank and the Customer;
  - (c) where any credit, facility or accommodation under the Relevant Documents is granted to more than one person as Customer, any of such persons;
  - (d) any person in charge of the allocation or control of the relevant facility or transaction under an umbrella or similar structure;
  - (e) any person with whom the Bank enters into a contractual relationship for the purpose of Clause 15.4;
  - (f) (subject to Clause 18.5 if applicable) any agent, contractor or service provider which provides services of any kind to the Bank (including any credit reference agency, rating agency, insurer or insurance broker, or direct or indirect provider of credit protection);
  - (g) any person to the extent required for the purposes of any litigation, arbitration, investigative or regulatory proceedings or procedure;
  - (h) any person under a duty of confidentiality to the Bank;
  - (i) any assignee, transferee, participant or sub-participant or any proposed assignee, proposed transferee, proposed participant or proposed sub-participant of the rights and obligations of the Bank;
  - (j) any investor, financier or proposed investor or financier of the Bank in connection with the transactions between the Bank and the Customer;
  - (k) any person to whom the Bank is required to disclose Customer Information for legitimate business purpose; and/or
  - (l) subject to compliance with any relevant legal or regulatory requirement, selected companies (whether or not they are a member of the Industrial Bank Group) for the purpose of informing the Customer of services which the Bank believes will be of interest to them,

in each case, whether such person is located in Hong Kong or elsewhere.

The Customer further consents to the disclosure of Customer Information by the Bank or any other member of the Industrial Bank Group, if required or permitted to do so by the PDPO, any other law, regulation, court order or any regulatory authority in any jurisdiction. The Customer further agrees (unless the Bank is informed otherwise) that the Bank may for primarily promotional purposes, disclose the fact that the Customer is its client (and for such purpose utilize the logo of the Customer) without disclosing details of the relevant transaction.

- 18.3 Without prejudice to the generality of Clause 18.2, the Customer irrevocably authorises the Bank to provide the following to any guarantor and/or third party providing Security Interests or other credit support in respect of any credit, other facility or accommodation:

- (a) a copy of these General Terms and the relevant facility letter(s) or any contract evidencing the obligations to be guaranteed or secured, or a summary thereof;
- (b) a copy of any formal demand for overdue payment (if any) which is sent to the Customer following the Bank's customary reminder; and
- (c) upon request by any guarantor and/or third party Security Interests provider, a copy of the latest statement of account provided by the Customer (if any).

18.4 Without prejudice to the generality of Clause 18.2, the Customer agrees and acknowledges that subject to Clause 19.5, any information with respect to the Customer which is provided by the Customer at the request of the Bank or collected in the course of dealings between the Customer and the Bank may be disclosed to, or used and retained by, any other institution, any debt collection agency, or any credit reference agency or similar service provider for the purpose of verifying such information or enabling them to provide such information to other institutions (i) in order that they may carry out credit and other status checks in respect of the Customer; (ii) for the purposes of reasonable monitoring of any indebtedness while there is a current default by the Customer as borrower or guarantor; and/or (iii) to assist them in collecting debts.

18.5 If the Customer is an SME (small and medium-sized enterprise) (as defined in the relevant guidelines & circulars issued by Hong Kong Monetary Authority):

- (a) (which is incorporated as a limited company):
  - (i) the Customer may by giving the Bank 90 days' notice in writing revoke the consent contained in Clause 18.4;
  - (ii) if the Customer gives notice to revoke the consent given pursuant to Clause 18.4 in accordance with Clause 18.5 (a) (i):
    - (01) subject to Clause 18.5 (a) (ii) (06), the Bank may continue to disclose information pursuant to Clause 18.4 until the 90 days period under the notice of revocation given pursuant to Clause 18.5 (a) (i) expires;
    - (02) the Bank may notify all persons to whom the Bank is permitted to disclose information pursuant to Clause 18.4 of the fact that a notice of revocation has been given pursuant to Clause 18.5 (a) (i);
    - (03) the Bank may regard the notice of revocation served on the Bank as also applying to the consent the Customer have previously given in respect of all other credit facilities granted to the Bank;
    - (04) the Bank may terminate all or any part of the credit facilities and any other facilities provided to the Customer with effect from the date to be advised by the Bank, subject to the terms and conditions by which the relevant facilities are governed;
    - (05) any credit reference agency or similar service provider may continue to retain information provided to it by the Bank in its internal archive for its internal use but not for provision of such information to other institutions when they seek credit reports; and
    - (06) any credit reference agency or similar service provider may continue to provide information relating to information which is a matter of public record notwithstanding the revocation of the consent referred to in Clause 18.5 (a) (i);
  - (iii) subject to Clauses 18.5 (a)(i) and (ii), the consent given by the Customer shall remain in effect despite the termination of any of the Customer's account or borrowing relationship with the Bank for a period of five years thereafter; or if later, for the period of 5 years after the settlement following a payment default of more than 60 days; and
- (b) (which is a sole proprietorship or partnership) the Customer may instruct the Bank, upon termination of an account by full repayment without any refinancing from the Bank, to make a request to the relevant credit reference agency or similar service provider to delete relevant account data from its database, provided that there has not been any default in payment in excess of 60 days within 5 years immediately before account termination.

## 19. JOINT AND SEVERAL LIABILITY

19.1 When any credit, facility or accommodation under the Relevant Documents is granted to more than one persons as Customer, the liability and obligations of each one of them hereunder are joint and several.

19.2 Each of the persons as Customer agrees to be bound by these General Terms notwithstanding that these General Terms may be invalid or unenforceable against any one or more of them whether or not the deficiency is known to the Bank.

19.3 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 as Customer without prejudicing or affecting its rights, liabilities and remedies against any other person.

## 20. CONDITIONAL RELEASE

Any release, discharge or settlement between the Bank and the Customer shall be conditional upon no security, disposition or payment to the Bank by the Customer or any other person being avoided, set aside, reduced or required to be repaid pursuant to any provisions or enactments relating to bankruptcy, liquidation, winding-up, insolvency or circumstance analogous to the foregoing events (whether or not having the force of law) and, in any such event, the Bank shall be entitled to recover the value or amount of any such security or payment from the Customer by enforcing these General Terms as if such release, discharge or settlement had not occurred and any such payment had not been made.

## 21. NOTICE TO CUSTOMER

21.1 All notices or other communications in connection with these General Terms are to be sent at the Customer's risk. The Bank does not assume any responsibility for any inaccuracy, interruption, error or delay or total failure in transmission or delivery by post, facsimile or other written form of electronic communication.

- 21.2 All notices or other communications from the Bank to the Customer under these General Terms must be in writing and may, without prejudice to any other form of delivery, be delivered personally or sent by post or transmitted by facsimile or email. Any such notice shall be deemed to be given as follows:
- (a) if by letter, when delivered personally or, when sent by prepaid post, two (2) Business Days following that on which it was so posted;
  - (b) if by facsimile, when confirmed by an activity report confirming the facsimile number to which such notice was sent; and
  - (c) if by email, when actually received (or made available) in readable form.
- 21.3 The address, facsimile number and email address of the Customer for all notices under or in connection with these General Terms are:
- (a) those set out in the Relevant Documents; or
  - (b) any other notified by the Customer for this purpose to the Bank by not less than five (5) Business Days' notice.
- 21.4 If any credit, facility or accommodation under the Relevant Documents is granted to more than one person as Customer, all notices or other communications from the Bank will be deemed to have been sent to all of them if sent to any one of them.

## **22. NOTICE TO THE BANK**

Any notice by the Customer to the Bank must be given in writing and may only be sent by personal delivery or by post addressed to the manager of the branch of the Bank through which the relevant banking services are provided to the Customer and shall only be effective when actually received by the Bank.

## **23. SEVERABILITY**

Each of the provisions of these General Terms is severable and distinct from the others. If a provision of these General Terms is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the validity or enforceability in that jurisdiction of any other provision of these General Terms; or
- (b) the validity or enforceability in other jurisdictions of that or any other provision of these General Terms.

## **24. VARIATION**

The Bank may by notice by means of letter, facsimile or email to the Customer vary, amend or supplement the terms and conditions of these General Terms and such variation, amendment or supplement shall take effect as between the Customer and the Bank on the date specified in the notice.

## **25. CONFLICT OF TERMS**

If there is any conflict or inconsistency between the provisions of these General Terms and any provisions of any other agreement between the Customer and the Bank, the latter shall prevail.

## **26. CONTINUING VALIDITY**

These General Terms shall continue to be valid and binding notwithstanding any change in the Customer's constitution by amalgamation, consolidation, reconstruction or otherwise.

## **27. PARTNERSHIP**

- 27.1 If the Customer is carrying on business in partnership, the terms and conditions of these General Terms shall be binding on each of the present and future partners of such partnership and the partners should be jointly and severally liable. Upon any change in the partners or upon the death, bankruptcy or incapacity of any partner, the Bank shall treat the partners for the time being as having full power and authority to carry on the business of the Customer and to deal with its assets as if there had been no such change, death, bankruptcy or incapacity.
- 27.2 Each partner shall be bound even though any other partner or any other person intended to be bound by these General Terms is not and the Bank shall be entitled to deal separately with a partner on any matter, including the release or discharge of the liability of that partner to any extent, without affecting the liability of any other partner.
- 27.3 No partner shall be entitled to the rights or remedies of a surety as regards the liability or obligations of another partner.
- 27.4 The dissolution of the partnership for any reason shall not affect the liabilities of the Customer as partner(s) until the Bank receives written notice from the Customer to such effect but no notice shall affect the Customer's liability for any transaction made with the Bank prior to the Bank's receipt of such notice.
- 27.5 Upon the death of a partner, the liability of the estate of the deceased partner to the Bank shall cease only with regard to transactions made with the Bank subsequent to the receipt by the Bank of written notice of the death of the deceased partner.
- 27.6 If any person is admitted to become a partner in the Customer, the Customer shall procure that such new partner shall undertake to adopt and be bound by the terms of these General Terms as if it had originally been a party hereto and sign any documents or agreements as the Bank may require for this purpose.

## **28. TRADE FINANCE TRANSACTIONS**

In addition to the provisions herein, the provisions set out in Schedule 1 shall apply to any trade finance contract or transaction which may be entered into from time to time between the Bank at its sole discretion and the Customer or any other person at the request and direction of the Customer. Schedule 1 to these General Terms forms part of these General Terms.

## **29. NO OBLIGATION TO PROVIDE CREDIT**

Nothing in these General Terms obliges the Bank to give or to continue to give any credit, banking facilities, accommodation or services to the Customer or to enter into any trade finance transactions or financial transactions or other transactions with the Customer.

### 30. THIRD PARTY RIGHTS

Unless expressly provided to the contrary in these General Terms, no person other than the Bank and the Customer has any right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or to enjoy the benefit of these General Terms. Notwithstanding any provision of these General Terms to the contrary or otherwise, the consent of any person is not required for the Bank to vary any provision of these General Terms at any time.

### 31. INTERPRETATION AND DEFINITIONS

#### 31.1 In these General Terms:

- (a) "**affiliate**" means, in respect of Industrial Bank Co., Ltd., any of its subsidiaries or associated companies or holding companies or any subsidiary or associated company of that holding company;
- (b) "**authorisation**" includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration and notarisation;
- (c) "**Business Day**" means a day (other than Saturday, Sunday or public holiday) on which banks are open for general business in Hong Kong;
- (d) "**Industrial Bank Group**" means Industrial Bank Co., Ltd. and its affiliates including any of their respective branches, offices or units, in each case whether in Hong Kong or elsewhere;
- (e) "**Event of Default**" means any of the following events:
  - (i) the Customer's failure to keep or perform any of the terms of these General Terms or any other agreement between the Bank and the Customer;
  - (ii) the Customer defaults or receives notice of default under any agreement relating to borrowing or any other indebtedness of the Customer becomes payable or capable of being declared payable prior to its stated maturity or is not paid when due;
  - (iii) any guarantee, indemnity or other contingent liability given, owing and/or payable by the Customer from time to time in respect of any other person is not honoured when due and called or any Security Interests given by the Customer from time to time in respect of the liabilities of any other person becomes enforceable;
  - (iv) any representation or warranty given, made or deemed made by the Customer in or pursuant to these General Terms or any other agreement between the Bank and the Customer is or proves to have been untrue, incorrect or misleading in any respect considered by the Bank to be material when given, made or deemed made or any event occurs as a result of which, if any such representation or warranty were repeated immediately thereafter with reference to the facts subsisting at the time of such repetition, such representation or warranty would be untrue, incorrect or misleading in any material respect;
  - (v) subject to Clause 3, any deterioration or impairment of any Security Interests or any part thereof or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated);
  - (vi) a creditor takes possession of all or any part of the Customer's business or assets or any attachment, execution or other process is enforced against the Customer;
  - (vii) the death of the Customer (if an individual) or the presentation of a petition, the commencement of a proceeding, the making of an order, the passing of an effective resolution or the issuing of a notice convening a meeting for the purpose of passing any resolution or the taking of any other step by any person for the winding-up, insolvency, administration, reorganisation, reconstruction, dissolution or bankruptcy of the Customer or for the appointment of a liquidator, receiver, administrator, trustee or similar officer of the Customer or of all or any part of its business or assets;
  - (viii) the Customer stops or suspends payments to its creditors generally or is unable or admits its inability to pay its debts as they fall due or seeks to enter into any composition or other arrangement with its creditors or is declared or becomes bankrupt or insolvent;
  - (ix) the Customer ceases or threatens to cease to carry on its business or any substantial part thereof or changes or threatens to change the nature or scope of its business or the Customer disposes of or threatens to dispose of or any governmental or other authority expropriates or threatens to expropriate all or any substantial part of its business or assets;
  - (x) any of the foregoing events occurs in relation to any person providing a guarantee, Security Interests or other credit support for any obligation of the Customer to the Bank, any of the Customer's co-obligors, accommodation makers, sureties or guarantors of any obligation to the Bank, or any endorser of any note or other document evidencing any obligation to the Bank;
  - (xi) any law, regulation, judgment or order (or the repeal or modification of any of the foregoing) suspends, varies, terminates or excuses performance by the Customer of its obligations under any of its obligations under these General Terms or any other agreement between the Bank and the Customer or purports to do any of the foregoing; and
  - (xii) there occurs, in the Bank's opinion, a material adverse change in the business or financial condition of the Customer or any provider of a guarantee, Security Interests or other credit support in respect of any the Customer's obligations under these General Terms or any other agreement between the Bank and the Customer or the ability of the Customer or the provider of any such guarantee, Security Interests or credit support to perform its obligations under these General Terms or other agreement between the Bank and the Customer.
- (f) "**HK Dollars**" means the lawful currency for the time being of Hong Kong;

- (g) "**Hong Kong**" means the Hong Kong Special Administrative Region of the People's Republic of China;
- (h) "**Potential Event of Default**" means any event or circumstance which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.
- (i) "**PRC**" means the People's Republic of China and excluding, for the purpose of these General Terms, Hong Kong, Taiwan and Macau Special Administrative Region.
- (j) "**Relevant Documents**" means these General Terms and all other documents relating to any transaction pursuant to or in connection with these General Terms;
- (k) "**RMB**" means the lawful currency for the time being of the RRC;
- (l) "**Sanctions**" means economic, trade, or financial sanctions, requirements, or embargoes imposed, administered, or enforced from time to time by any Sanctions Authority;
- (m) "**Sanctions Authority**" means the United States (including, without limitation, the Office of Foreign Assets Control of the United States Department of the Treasury and the United States Department of State), the United Kingdom (including, without limitation, HM Treasury), the Hong Kong Government, the European Union and any EU member state, the United Nations Security Council, the PRC and any other relevant sanctions authority;
- (n) "**Sanctioned Jurisdiction**" means, at any time, a country or territory that is, or whose government is, the subject of Sanctions;
- (o) "**Sanctioned Person**" means, at any time, (a) any person listed in any Sanctions related list maintained by any Sanctions Authority, (b) any person located, organised, or resident in a Sanctioned Jurisdiction, or (c) any other subject of Sanctions, including, without limitation, any person controlled or owned, directly or indirectly, by, or acting on behalf of, or at the direction of, any such person or persons described in the foregoing items (a) or (b);
- (p) "**Security Assets**" means all assets of the Customer subject to the Security Interests created by these General Terms (in particular Clause 3.1) or any other security document in favour of the Bank;
- (q) "**Security Interests**" means any mortgage, charge, assignment, transfer, disposal, pledge, lien, rights of set-off, arrangement for retention of title or hypothecation or trust arrangement for the purpose of, or which has the effect of, granting or conferring security; and
- (r) "**subsidiary**" shall have the meaning ascribed to it in the Companies Ordinance (Cap 622 of the Laws of Hong Kong).

#### 31.2 In these General Terms:

- (a) each of the rights, powers and remedies given to the Bank by these General Terms are in addition to all other rights, powers and remedies given to it or by virtue of any other security, statute or rule of law;
- (b) the liabilities and obligations of the Customer to the Bank include all its past, present and future, actual and contingent liabilities and obligations to the Bank; and
- (c) a document is a reference to that document as amended or supplemented.

31.3 These General Terms constitute a continuing agreement and all the rights, powers and remedies under these General Terms shall apply to all the Customer's obligations to the Bank notwithstanding any event affecting the capacity of the Customer to be bound by these General Terms.

31.4 Unless contrary indication appears, any reference to these General Terms to:

- (a) a Clause or Schedule is a reference to a clause of or schedule to these General Terms and each Schedule shall form part of these General Terms;
- (b) a paragraph is, unless otherwise stated, a reference to a paragraph of the Clause in which the reference appears;
- (c) a person includes an individual, a company, partnership or body unincorporated and its successors and assigns;
- (d) words importing the singular include the plural and vice versa and words denoting the neuter gender includes all genders;
- (e) "including" or "includes" means including or includes without limitation;
- (f) "assets" includes any present and future properties, revenues and rights of every description;
- (g) "these General Terms" or any other agreement or instrument is a reference to these General Terms or other agreement or instrument as amended, supplemented, novated and/or replaced from time to time; and
- (h) a provision of law is a reference to that provision as amended or re-enacted.

31.5 Clause headings in these General Terms are for convenience only and are to be ignored in construing these General Terms.

31.6 If any credit, facility or accommodation under the Relevant Documents is granted to two or more persons as Customer, any reference to "Customer" shall be deemed to refer to all such persons or if the context requires, any one or more of them.

31.7 Where the Customer is a sole proprietorship, the expression "the Customer" shall include the sole proprietor.

## 32. GOVERNING LAW

These General Terms are governed by and construed in accordance with the laws of Hong Kong.

## 33. JURISDICTION

33.1 The Customer agrees that the courts of Hong Kong have jurisdiction to settle any disputes in connection with these General Terms and accordingly submits to the non-exclusive jurisdiction of the Hong Kong courts.

33.2 If the Customer is not ordinarily resident in Hong Kong nor a company incorporated under the laws of Hong Kong nor a non-Hong Kong company registered under Part 16 of the Companies Ordinance (Cap.622, Laws of Hong Kong) nor registered under Part XI of the predecessor Companies Ordinance, without prejudice to any other mode of service, the Customer:

- (a) irrevocably appoints a company incorporated in Hong Kong as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with these General Terms and promptly provides the Bank with evidence of such appointment;
- (b) agrees that failure by a process agent to notify the Customer of the process shall not invalidate the proceedings concerned; and
- (c) agrees that if the appointment of any company mentioned in paragraph (a) above ceases to be effective, the Customer shall immediately appoint another company incorporated in Hong Kong to accept service of process on its behalf in Hong Kong and notify in writing to the Bank of the change immediately, failing which the Bank may, but is not obliged to, appoint a company incorporated in Hong Kong to accept service of process on the Customer's behalf in Hong Kong, at the costs of the Customer.

33.3 To the extent that the Customer may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed) the Customer hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.

**34. GOVERNING VERSION**

These General Terms are in English and the Chinese translation of it is for reference only. The English version of these General Terms is the governing version and shall prevail whenever there is any discrepancy between the English version and the Chinese translation of it.

\*\*\*\*\*

## SCHEDULE 1

### TRADE FINANCE TRANSACTIONS

#### 1. Scope of Application

- 1.1 The provisions in this Schedule shall apply to any facility or accommodation as the Bank may, at its discretion, extend or continue to extend to the Customer or to any other person at the request of the Customer from time to time by way of loans, discounts, overdrafts, advances against bills and/or documents, negotiation or collection of bills and/or documents, the issue, confirmation or transfer of a documentary credit (the “**Documentary Credit**”) or a standby letter of credit (“**Standby Credit**”), the issue of a shipping guarantee or other dealings (collectively the “**Trade Finance Facilities**”) concerning goods, services and/or obligations to which Documents relate (respectively, “**Goods**”, “**Services**” and “**Obligations**”), in each case to such extent and in such manner as the Bank may think fit.
- 1.2 “**Documents**” means all bills, promissory notes and other instruments used for obtaining the payment of money, invoices, documents of title, transportation documents, warehouse receipts, insurance policies and other documents relating to Goods and stipulated documents under any Documentary Credit or Standby Credit or otherwise, which Goods and/or documents are in the name, possession or control of the Bank or held by or to the order of the Bank, whether for custody or any other reason and whether or not in the ordinary course of banking business.
- 1.3 The terms and conditions in this Schedule shall be subject to such other terms and conditions which the Bank may specify in relation to any individual Documentary Credit or Standby Credit or any particular Trade Finance Facilities.
- 1.4 Each Documentary Credit shall be subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce (“**ICC**”) as are in effect from time to time (“**UCP**”). Each Standby Credit may be subject to UCP and/or the International Standby Practices published by ICC as are in effect from time to time (“**ISP**”) to be agreed between the Bank and the Customer from time to time. For matters not addressed by UCP or ISP, such Documentary Credit and Standby Credit shall be subject to and governed by the laws of Hong Kong. Each guarantee, bond or payment undertaking issued by the Bank shall subject to (i) ISP, (ii) Uniform Rules for Demand Guarantees (“**URDG**”) of ICC as are in effect from time to time or (iii) the governing law (as stipulated in the relevant application form(s) or the text of the instrument).
- 1.5 Each collection (either documentary or clean) shall be subject to the ICC Uniform Rules for Collections (“**URC**”) as are in effect from time to time (“**Rules for Collections**”).
- 1.6 In the event of any conflict between this Schedule and the UCP and/or ISP and/or URDG and /or URC and / or any ICC rules, this Schedule shall prevail.

#### 2. Documentary Credit or Standby Credit

- 2.1 The Bank is authorised to accept and pay all drafts and documents drawn or purporting to be drawn and presented or negotiated under each Documentary Credit or Standby Credit.
- 2.2 The Bank may, at its sole discretion restrict negotiations under any Documentary Credit or Standby Credit to its own offices or to any correspondent or agent of its choice and, in such a case, the Bank is authorised to accept and pay all documents drawn or purporting to be drawn on any such office, correspondent or agent.
- 2.3 Neither the Bank nor its agents or correspondents shall be in any way responsible for the existence, description, quality, quantity, value, fitness or delivery of any Goods shipped or delivered under any Documentary Credit or Standby Credit opened on the Customer’s application, nor for the correctness, genuineness, regularity or validity of any Documents presented under such Documentary Credit or Standby Credit, nor for general or particular conditions stipulated in any such Documents, nor for any delay or deviation from instructions in regard to shipment of such Goods and no obligation of the Customer to the Bank in respect of such Documentary Credit or Standby Credit shall be affected thereby.
- 2.4 The Customer agrees (a) 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 Documentary Credit or Standby Credit opened on the Customer’s application nor shall the Bank have any duty to ascertain the enforceability or effectiveness of such terms and requirements and give the Customer any opinion thereon before incorporating them in any such Documentary Credit or Standby Credit; and (b) 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 the opening of any such Documentary Credit or Standby Credit notwithstanding that without the Bank’s notification, the Customer may not be aware of such uncertainty or ambiguity.
- 2.5 The Bank shall not be responsible other than for the exercise of reasonable care in respect of any Goods, Documents or items in its possession and shall not be liable in any way whatever for the default or negligence of any agent or correspondent selected by the Bank or for any loss in transit.
- 2.6 The Customer shall, as applicable, accept all documents presented and pay the Bank not later than the applicable date, an amount equal to the amount due under any Documentary Credit or Standby Credit.
- 2.7 The Customer shall pay to the Bank immediately on demand, a commission at such rate(s) as the Bank may from time to time prescribe in connection with each Documentary Credit or Standby Credit.
- 2.8 The presentation of documents under a Documentary Credit or Standby Credit shall be in compliance with its terms if they purport to be in order and, taken as a whole, contain the description of the relevant Goods, Services and/or Obligations.
- 2.9 This Schedule shall also apply to any Documentary Credit or Standby Credit extended or amended at the request and direction of the Customer.
- 2.10 The Bank shall at its sole discretion be entitled to terminate any Documentary Credit or Standby Credit other than an irrevocable Documentary Credit or Standby Credit.
- 2.11 The Customer shall hold the Bank, its officers, correspondents and agents free of any liability or responsibility for the consequences arising in respect of any Documentary Credit or Standby Credit from delay or loss in transit of any message, letter or document, or the delay, mutilation, omission or other error in the transmission of any cable, telegram, telex or other

transmitted message or any error in translation or interpretation of technical terms or arising from any ambiguity in instructions from the Customer.

### **3. Back-to-Back Documentary Credit**

- 3.1 A back-to-back documentary credit must be issued against the support of a master documentary credit and all the terms and conditions of the back-to-back documentary credit must be identical to that of the master documentary credit except as otherwise approved by the Bank.
- 3.2 The Bank is irrevocably authorised (but is not obliged) to (i) utilise the presented documents under the back-to-back documentary credit for drawing of the master documentary credit; (ii) negotiate the presented document, prepay the deferred payment undertaking incurred by the Bank or purchase the draft accepted by the Bank (collectively, the “**Financing**”) under the master documentary credit; and (iii) directly apply the Financing proceeds of the master documentary credit to settle the corresponding drawing(s) under the back-to-back documentary credit without first crediting such proceeds to the Customer’s account with the Bank, irrespective of discrepancies that may appear on the presented documents under the back-to-back documentary credit (all of which, if any, are hereby waived).

### **4. Export Documents**

- 4.1 Notwithstanding the provisions of the UCP or other ICC rules, the Customer hereby expressly agrees and consents that the Bank shall have full recourse against it for any advances (including purchase, discounting, prepayment, negotiation of financing of any kind) provided by the Bank against any Documents or drawings under any export related transaction (including but not limited to any Documentary Credits and documentary collections (including documents against acceptance (D/A) or documents against payment (D/P) transactions)).
- 4.2 The Customer shall, on demand, pay the Bank not later than the applicable date an amount equal to the amount due under bills negotiated or endorsed by the Bank, whether or not drawn under a Documentary Credit or Standby Credit, which are dishonoured or not paid on their respective due date(s). Non-payment shall be deemed to have occurred if the Bank has not on their due date(s) received unconditionally the whole sum due. The Bank shall have full recourse against the Customer in these cases irrespective of the reason for dishonour or non-payment.
- 4.3 The Customer shall also reimburse the Bank immediately on demand for advances or Trade Finance Facilities made against any documents which have not been duly taken up on presentation or in respect of which payment has not been duly made to the Bank.
- 4.4 The Bank is authorised, at its sole discretion and on such conditions as it thinks fit from time to time, in relation to any bill, whether or not drawn under a Documentary Credit or Standby Credit:
  - (a) to take conditional acceptances and/or acceptances for honour and/or to extend the due date(s) for payment;
  - (b) to accept payment from the drawees or acceptors before maturity under rebate or discount;
  - (c) to accept part payment before maturity and to deliver a proportionate part of the Goods to the drawees or acceptors of the bills or the consignees of the Goods;
  - (d) to deliver up the shipping or other documents relating to any bill only upon payment in full or part payment of such bill, notwithstanding that such procedure may be contrary to the previous instructions of the Customer, if the Bank, its offices, correspondents or agents deem it advisable;
  - (e) at the request of the drawees, to delay presentation of any bill for payment or acceptance, without prejudicing or affecting the liabilities of the Customer to the Bank in respect of such bill, unless the Bank has received prior explicit instructions from the Customer to the contrary;
  - (f) to protest any bill which is dishonoured and to take any other steps which the Bank may consider necessary or desirable to protect its rights and interest in such bill; and
  - (g) to institute proceedings and to take steps for the recovery from the acceptors or endorsers of any bill of any amount due in respect of such bill, despite the Bank having debited the account of the Customer with the amount of such bill.

### **5. Collections**

- 5.1 If the Bank is requested to make a collection, the Bank is authorised to treat the service as subject to and conditional upon collection and actual receipt by the Bank of full payment of the relevant bill, draft or document.
- 5.2 In the absence of such collection and receipt by the Bank, the Customer will reimburse the Bank, immediately on demand, for any and all amounts due in respect of such service.
- 5.3 All items not payable at the Bank’s office would be sent to the Bank for transmission at the sole risk of the Customer and may be transmitted by mail or other means, directly or via any of the Bank’s offices, correspondents or agents to the drawee, maker or paying agent for payment in cash, credit for acceptance or certification or in such other manner as the Bank may agree from time to time.
- 5.4 The Customer expressly acknowledges and confirms that any collection is subject to final payment in cash (or in such other manner as the Bank may agree from time to time) and the Bank is required to credit the Customer’s account only after the Bank has received such payment. If final payment in cash (or such other manner as agreed by the Bank from time to time) is not received for whatever reason, the Bank is entitled to charge back and recover such amount from the Customer and the Customer undertakes to reimburse the Bank such amount immediately on demand together with any and all charges, costs and expenses (including legal expenses on a full indemnity basis) certified as being incurred by the Bank in relation to the transaction.
- 5.5 In addition, where the collection is to be made by the Bank under any bill, draft or document, the Bank shall have no duty whatsoever to examine and see whether the documents and/or drafts received from the Customer meet the requirements of the relevant bill, draft or document. If the Bank accepts the Customer’s request to check the documents and/or drafts, the Bank will only check them on a "no responsibility" basis notwithstanding payment of any 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 and/or drafts checked by the Bank do not meet the requirements of the relevant bill, draft or document.

5.6 In receiving any items for deposit or collection, the Bank assumes no responsibility beyond the duty to exercise reasonable care.

## **6. Pre-Shipment Loan**

6.1 In respect of any pre-shipment loan application, the Customer undertakes to present to the Bank for negotiation, prepayment, purchase and/or presentation to the Issuing Bank or Nominated Bank (both as defined in the UCP) compliant Documents under the export documentary credit referred to in such application as soon as available and in any case not later than the latest presentation date prescribed in such export documentary credit.

6.2 Subject to the Bank's sole and absolute discretion, if the Customer fails to deliver the Documents to the Bank on or before the agreed date mentioned in Clause 6.1 of this Schedule, the Customer shall immediately pay to the Bank in full all advances made by the Bank pursuant to the relevant pre-shipment loan together with all interest accrued and all costs and expenses incurred.

## **7. Advances**

7.1 The Bank is hereby authorised to open in its books one or more accounts in the Customer's name to be designated "Advance Account(s)", or such other designation (if any) as the Bank may see fit to give such account or accounts, and to charge to such account or accounts all drafts drawn on the Bank by the Customer and all advances of every kind and nature which the Bank may make to the Customer or at the Customer's request.

7.2 On the Bank's delivery of any Goods or Documents relating to goods into the Customer's possession, the Customer shall execute and deliver to the Bank, a trust receipt in relation thereto in such form as may be acceptable to the Bank, together with such other documents as the Bank may require.

7.3 Where any application is made by the Customer to the Bank for a packing loan, the Customer undertakes to present to the Bank the Documents and/or drafts for negotiation properly drawn and conforming to the terms of the letter of credit referred to in such application as soon as available and in any case not later than the date fixed in the Customer's application as approved by the Bank. If the required Documents and/or drafts are not delivered to the Bank upon such date, the Customer shall immediately repay the advance to the Bank in full.

## **8. Part Shipment**

Unless the Bank receives from the Customer instructions in writing to the contrary:

- (a) part shipment only of the goods to which the Documentary Credit or Standby Credit relate may be made; and
- (b) where certain shipment instalments are not made within their designated periods, shipment of subsequent instalments within their designated periods may still be made,

and the Bank and/or its agents may, but shall not be obliged to, honour drafts to which the shipments referred to above relate.

## **9. Discrepancies in Documents**

9.1 If, at the request of the Customer, the Bank, its officers, correspondents or agents countersign or issue any guarantee or indemnity covering discrepancies between the Documents actually presented under the terms of a Documentary Credit or Standby Credit and the relative terms of such Documentary Credit or Standby Credit, the Customer shall pay to the Bank immediately on demand any moneys and liabilities whatsoever which may be claimed or demanded from and paid by the Bank, its officers, correspondents and/or agents by reason of having countersigned or issued such guarantee or indemnity and shall indemnify the Bank, its offices, correspondents and/or agents against all actions, claims, demands, proceedings, losses, liabilities, damages, costs, charges and expenses, legal and otherwise, of whatever nature, that may be taken, made or threatened against or sustained, suffered, incurred or paid by the Bank and/or them in connection with or arising out of such guarantee or indemnity or by reason of the Bank having negotiated any bill notwithstanding the discrepancies in the Documents. Subject to any applicable laws and regulations, the Bank shall be under no duty to the Customer to verify the contents of such Documentary Credit or Standby Credit actually presented.

9.2 The Bank reserves its right to reject any discrepancy(ies) in Documents presented under any Documentary Credit or Standby Credit issued or confirmed by the Bank notwithstanding acceptance of such discrepancy(ies) by the Customer, and the Customer undertakes not to communicate any waiver of discrepancy(ies) to any third party without the prior written consent of the Bank.

## **10. Payments**

10.1 The Customer shall pay to the Bank on demand all re-exchange expenses, interest, commission, charges, disbursements and all other expenses whatsoever due to or incurred by the Bank, its offices, agents and correspondents.

10.2 The Bank is hereby authorised to debit the account of the Customer with all sums due from or chargeable to the Customer.

10.3 The Bank is hereby authorised at its absolute discretion to convert into such currency as the Bank may think fit by telegraphic transfer or otherwise any moneys received by the Bank under or by virtue hereof and to debit the account of the Customer with all costs, charges and any loss on exchange thereby incurred.

10.4 The Bank is hereby authorised to apply any moneys received from the Customer, or any other person, to such account or liability of the Customer as the Bank may at its absolute discretion determine.

## **11. Shipping Guarantees/ Release of Bills of Lading**

If the Bank shall, at the request of the Customer, release any bills of lading to the Customer or endorse any transport document or countersign or issue any letter of indemnity or letter of guarantee to shipping companies, carriers or forwarding agents for taking delivery of 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 otherwise, the Customer hereby agrees that the following terms shall apply in respect of each such letter:

- (a) the Bank is authorised to honour by acceptance and/or by payment any draft drawn under the relevant Documentary Credit and/or Documents, notwithstanding the absence of required accompanying documents or any defects or discrepancies in

the accompanying documents and even if such Goods or any part thereof are unacceptable to the Customer for any reasons whatsoever;

- (b) the Customer shall at all times keep the Bank indemnified against all actions, proceedings, liability, claims, damages, costs and expenses and against all payment whatsoever which may be made by the Bank in relation to or arising out of the Bank's countersigning any such letter;
- (c) the Customer shall pay the Bank a commission at such rate as the Bank may from time to time prescribe during the existence of such letter;
- (d) the Customer shall remain liable to the Bank hereunder until the Bank has been fully, absolutely and unconditionally released and discharged from all its obligations under any such letter;
- (e) the Bank may from time to time, without making prior demand, debit to the Customer's account(s) with the Bank, all sums which may be paid by it or any of its correspondents or agents under or in connection with such letter; and
- (f) the Customer undertakes to deposit with the Bank immediately on demand any amount for which the Bank, may become liable to pay from time to time under or in connection with such letter.

## 12. Interest in the Goods

The Customer hereby irrevocably and unconditionally undertakes and warrants to the Bank that the Documents, the Goods and the proceeds thereof shall be in the sole beneficial ownership of the Customer, free from Security Interests or other encumbrances, claims or interests of third parties, except for the pledge and/or other security created in favour of the Bank pursuant to this Schedule.

## 13. Security

- 13.1 In consideration of the Bank granting or continuing to make available the Trade Finance Facilities, the Bank shall have a pledge, by way of security, on the Documents and/or the Goods until (i) all the moneys in any and all currency(ies) owing and/or payable by the Customer to the Bank at any time, actually or contingently, in any capacity, alone or jointly with any other person, (ii) all interest thereon (both before and after any demand or judgment), to the date on which the Bank receives unconditional payment, at the rate(s) payable by the Customer or which would have been payable but for any circumstance which restricts payment, (iii) any and all expenses of the Bank in making payment under this Schedule on behalf of the Customer (but without the Bank being under any obligation to do so) as a result of failure by the Customer to make such payment when due and (iv) all expenses of the Bank in enforcing this Schedule on a full indemnity basis have been paid in full or absolutely discharged.
- 13.2 The pledge shall be a continuing security and enforceable in addition to and not affected by the existence of any other security (whether given by the Customer or otherwise) now or from time to time held by the Bank in respect of or in connection with indebtedness owing and/or payable by the Customer to the Bank from time to time. Any restriction on the right of consolidating securities shall not apply to the pledge.
- 13.3 The Bank shall be entitled to enforce the pledge and may, without demand, notice, legal process or any other action with respect to the Customer or any other person, realise, deal with, sell, negotiate or otherwise dispose of all or some of the Documents and the Goods, at any time and in any way it deems expedient, free from any restrictions and claims and the Bank shall not be liable for any loss or damage arising out of such realisation, dealing, sale, negotiation or disposal if:
- (a) there is a default in acceptance or payment of any Document;
  - (b) the Customer has failed to pay any amount owing and/or payable to the Bank when due or is in default in complying with any of the terms of this Schedule or a trust receipt (or such other documents having the same purpose) relating to Goods;
  - (c) the Customer or any drawee or acceptor of a Document is unable or admits to being unable to pay its debts as they become due or is subject to any proceedings in or analogous to insolvency, bankruptcy or liquidation or if legal process is applied for, levied or enforced against the Documents and/or the Goods or any other assets of the Customer;
  - (d) any of the assets of the Customer shall be seized or subject to execution under any judgment or subject to receivership;
  - (e) any action is threatened or taken which might prejudice the Bank's interest in and rights against the Documents and/or the Goods; or
  - (f) the Bank considers it desirable to sell the Goods.
- 13.4 The Customer shall pay the costs of such realisation, dealing, sale, negotiation or disposal.
- 13.5 The Customer shall immediately upon demand pay any deficiency which may remain owing and/or payable to the Bank after such realisation, dealing, sale, negotiation or disposal.
- 13.6 The Customer hereby irrevocably and unconditionally assigns to the Bank any rights which the Customer may have as the unpaid seller of Goods.
- 13.7 The Customer may, from time to time, place with the Bank money as marginal deposit against any liability incurred by the Bank from a particular transaction under a facility, and the Bank is authorised to apply all or part of such deposit at its discretion in settlement of the whole or part of the said liability together with interest and commission thereon and other charges connected therewith. The Bank is further authorised to debit the Customer's account with the Bank without further notice with such funds as the Bank considers necessary in order to satisfy the said liability. If the marginal deposit is made in a currency other than the one in which the said liability is expressed, the Bank shall have the right to convert the marginal deposit at its option and at any time into the currency in which the said liability is expressed at the exchange rate ruling at the date such conversion is made.
- 13.8 The Bank is hereby authorised to execute and do or cause to be executed and done all such documents and things as the Bank may consider necessary or desirable for the purpose of such sale or other disposition of or dealing with the Goods.
- 13.9 The Bank shall not be liable in any manner whatsoever for the default of any broker employed to sell, dispose of or otherwise deal with any Goods or of any other person employed for any purpose connected therewith and shall not be responsible to the Customer for the price obtained.

13.10 The risks of the pledged goods shall be with the Customer and the Bank shall not be responsible for any loss or damage or depreciation in value of any pledged goods or documents held by the Bank as security.

#### 14. Release of Pledged Goods

If any Documents and/or pledged goods are released to the Customer or to its order:-

- (a) the Customer shall 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;
- (b) they shall be held by the Customer (or any other person to its order) exclusively for the purpose of their sale or other disposition approved by the Bank on normal trade terms at market value and, in such event (whether or not a trust receipt or such other documents having the same purpose is signed on delivery), the Documents, Goods and the proceeds thereof shall be held on trust for the Bank and solely to its order;
- (c) all such proceeds shall be kept separate, shall be paid to the Bank immediately upon receipt and the Bank is authorised to demand and/or receive such proceeds from any person without reference to or further authority from the Customer.

#### 15. Undertakings

15.1 The Customer hereby irrevocably and unconditionally undertakes to the Bank:

- (a) to insure the Goods, at its own expense, for their full value against all insurable risks in such manner as the Bank may require and, if so requested by the Bank, will arrange for the Bank's interest in the 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;
- (b) to promptly make payment to the Bank of all insurance proceeds received by it in respect of Goods and, pending payment, will hold such proceeds on trust for the Bank;
- (c) to endorse the Documents in favour of the Bank, deliver and deposit the Documents with the Bank or to its order and note in its records the interest of the Bank in the Documents and the Goods;
- (d) to pay all costs and expenses of and incidental to the delivery, transportation and storage of the Goods;
- (e) to promptly inform the Bank of any event of which it becomes aware which may adversely affect the ability of a buyer to complete the purchase and accept delivery of Goods;
- (f) to procure the prompt release of the Bank from any guarantee, indemnity, other commitment or security which the Bank may have provided in respect of Documents and/or Goods;
- (g) not to create or permit to subsist any Security Interests or attempt to otherwise encumber, transfer, sell, dispose of or otherwise deal with the Documents and/or the Goods except as directed by or with the prior consent of the Bank in writing;
- (h) to keep the Goods separate from any other property of the Customer or other persons and ensure such Goods are clearly marked;
- (i) not to permit Goods to be processed or altered without the prior written consent of the Bank;
- (j) not to take any action which might prejudice the value, condition, quality or quantity of the Goods and/or the effectiveness of the pledge and this Schedule;
- (k) to obtain and maintain in full force, validity and effect all necessary licences for the import or export or shipment of Goods or any governmental and other approvals, authorities, licences and consents required under this Schedule; and
- (l) to comply with all foreign and domestic governmental regulations in relation to the shipment of Goods or the financing; and to comply with all applicable laws and regulations in all relevant jurisdiction (including but not limited to laws and regulations relating to sanctions, anti-money laundering, and anti-corruption).

15.2 The Customer further undertakes that, at the request of the Bank, it shall:

- (a) provide such information and/or documents concerning paragraphs (k) and (l) of Clause 15.1 of this Schedule as the Bank may at any time require;
- (b) provide the Bank with such information and/or documents concerning the Documents and the Goods and any proposed sale of Goods as the Bank may require from time to time;
- (c) facilitate the realisation, dealing, sale, negotiation or disposal of the Documents and the Goods by executing or causing to be executed all such documents and the things as the Bank may require for such realisation, dealing, sale, negotiation or disposal; and
- (d) from time to time keep the Bank promptly informed of the whereabouts of the Goods and of any change in the condition, quality or quantity of the Goods and, upon the request of the Bank, to make the Goods available to the Bank at a place which the Bank may reasonably designate.

#### 16. Authorisations

The Customer authorises the Bank:

- (a) to appoint any other person as its correspondent, nominee or agent in connection with any Trade Finance Facilities and the Bank may delegate any of its powers under this Schedule to such person;
- (b) to take such steps and to make such payments as it considers necessary and appropriate, at the sole cost of the Customer, to remedy any default by the Customer in compliance with any of its obligations under this Schedule;
- (c) to insure the Goods to their full value against all insurable risks if the Customer shall fail to do so;
- (d) to land and store Goods and to arrange for their shipment;
- (e) to enter any premises at any time for the purpose of inspecting and/or securing possession or custody of the Goods and to take such steps as the Bank may at its sole discretion consider necessary or desirable to protect its interest in the Goods;
- (f) to notify any other person of its interest in the Documents and the Goods;

- (g) to accept at the Bank's sole discretion American Institute clauses insurance policies or certificates in any case where any Documentary Credit or Standby Credit is issued in favour of a beneficiary in the United States of America or is to be advised through a correspondent or agent in the United States of America;
- (h) to make payment immediately when due or on demand under any Documentary Credit or Standby Credit, guarantee, indemnity or other commitment or security which the Bank may have provided in respect of Documents, Goods, Services and/or Obligations without reference to or further authority or consent from the Customer or any other person, without enquiry as to the validity or otherwise of any document, claim or demand (irrespective of any dispute by the Customer) and payment by the Bank shall be binding on the Customer;
- (i) without prejudice to any other provisions of this Schedule, to debit any account of the Customer with the Bank for any amount referred to in Clause 16(h) of this Schedule at any time after payment by the Bank or any other amount owed by the Customer to the Bank pursuant to this Schedule at any time after the relevant due date; and
- (j) to act in accordance with its regular business practice and procedure and not to accept or act on any instruction of the Customer if it is (in the Bank's opinion) not practicable or reasonable for the Bank to do so or if it may adversely affect the interest of the Bank in doing so.

**17. Foreign Exchange**

Subject to the Bank's agreement, the Customer may request the Bank to open any Documentary Credit or Standby Credit in any currency and elect to repay the Bank in any currency other than the currency in which such Documentary Credit or Standby Credit was opened, calculated at such rate which the Bank determines to be prevailing in the relevant foreign exchange market at the relevant time, such determination to be conclusive and binding on the Customer.

**18. Miscellaneous**

- 18.1 The Customer agrees that the Bank is not in any circumstances to be held responsible for any detention, loss or deterioration of any of the Goods or any damage to them or for the quantity, quality, condition, delivery or insurance of them or the correctness, validity, sufficiency or genuineness of any of the documents relating to them from time to time deposited with the Bank or its agents or representatives as stated above, or for any delay or omission which may occur in connection with the acceptance or payment of any draft drawn on a buyer of any of such Goods.
- 18.2 The provisions in this Schedule are retrospective in their action and applicable to all current and future transactions and are of a continuing effect notwithstanding the death, bankruptcy, liquidation or any change in the constitution of the Customer or any settlement of account or other matter whatsoever.
- 18.3 The rights and powers conferred on the Bank hereby are in addition and without prejudice to any other securities rights which the Bank may now or hereafter hold or have in respect of the liabilities of the Customer hereunder and the terms and conditions herein contained shall continue to apply notwithstanding the granting of any time or other indulgence by the Bank or the making of any arrangement with the Bank or any other person.
- 18.4 The rights, powers and discretions given to the Bank are given equally to any of its directors, officers or managers, its offices, correspondents and agents and the holders for the time being of any draft or bill as if such person were in each case specifically named and such rights, powers and discretions may be exercised accordingly.

\*\*\*\*\*

