



## Trade Services Terms(v1.0)

These Terms apply to the following **Trade Services** as requested by the Customer and provided by the Industrial and Commercial Bank of China Limited-Kuwait Branch and supplement our general Terms and Conditions for all accounts with the Bank including:

- **Collections:** documents and bills remitted by the Bank in connection with the sale of goods or services by the Customer.
- **Documentary L/Cs:** documentary letters of credit issued by or at the request of the Bank.
- **Guarantees:** guarantees, bonds, standby letters of guarantee and accreditation, indemnities or undertakings issued by or at the request of the Bank.

Agreement/Terms and the related application and any requests and correspondence with arrived and issued by the bank and the customer, or the consent of the bank.

### 1 Collections

Collections are governed by the uniform rules for collection ICC, publication No. 522, as amended in no contradiction with the laws, regulations and instructions of CBK applicable in the State of Kuwait.

### 2 Documentary L/Cs and Guarantees – Issuing

2.1 The Bank will decide the form of a Documentary L/C or Guarantee. If agreed by the Bank, a Guarantee will be issued in the form provided by the Customer.

2.2 The Bank may restrict the availability for negotiation of any Documentary L/C, even if the Customer's instructions are for it to be freely negotiable.

2.3 The Bank may select the advising bank, even where the Customer has specified an alternative.

2.4 Documentary L/Cs will be subject to Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600, as revised (**UCP600**) in no contradiction with the laws, regulations and instructions of CBK applicable in the State of Kuwait.

2.5 Guarantees will be subject to the Uniform Rules for Demand Guarantees, ICC Publication No.458, as revised in no contradiction with the laws, regulations and instructions of CBK applicable in the State of Kuwait.

2.6 Standby letters of credit will be subject to UCP600 or International Standby Practices (ISP 98) ICC Publication No. 590, as amended in no contradiction with the laws, regulations and instructions of CBK applicable in the State of Kuwait.. If not specified by the Customer, the Bank will decide.

### 3 Documentary L/Cs and Guarantees – Claims

3.1 The Bank may honour any claim or demand purporting to be made under any Documentary L/C or Guarantee, that appears to be in order (a Claim). The honouring of any Claim will be conclusive evidence of the customers liability.

3.2 The Bank is not required to carry out any investigation or seek any confirmation from the Customer before honouring a Claim.

3.3 The Bank deals in documents only and is not concerned with the legality of a Claim or any underlying transaction or any available set-off, counterclaim or other defence of the Customer.

#### **4 Indemnity**

4.1 The Customer will pay to on demand the Bank the amount of:

4.1.1 any Claim under any Documentary L/C or Guarantee,

4.1.2 all losses, costs, damages and expenses incurred by the Bank in connection with any Trade Service caused other than by the Bank's negligence, plus interest on that amount. Interest will be calculated daily at \_% p.a. from the date of payment by the Bank and compounded monthly.

4.2 The Bank may pay a discounted amount before the maturity date under any deferred payment Documentary L/C. If it does, the Customer will still be liable to pay the Bank the original amount of the Claim on the original maturity date.

4.3 The Customer will be liable to pay the Bank even if a Claim is false or fraudulent or any person who signed a document lacked authority.

#### **5 Documentary L/Cs – Goods**

5.1 The **Goods** are those subject to the transaction financed by a Documentary L/C.

5.2 The Customer must acquire ownership of the Goods, not subject to any charge or interest.

5.3 The Bank is not responsible for:

5.3.1 the description, quantity, quality or value of the Goods as stated in invoices, bills of lading or other documents.

5.3.2 the conditions or sufficiency of any insurance of the Goods.

5.4 The import of the Goods must not be prohibited and the Customer must hold a valid import licence, where required, and provide it to the Bank, on request.

5.5 The Bank may arrange to transport, insure and store the Goods (but without any obligation to do so).

5.6 The Customer will:

5.6.1 pay all freight, warehouse charges, dock transit charges, rent and all other costs of transporting and storing the Goods.

5.6.2 comply with any instructions of the Bank about dealing with or storing the Goods.

5.6.3 tell the Bank where the Goods are and allow it access at any time to inspect, take samples or take possession of the Goods.



## **6 Documentary L/Cs – Insurance**

Unless a Documentary LC requires the presentation of insurance documents, the Customer will:

- 6.1 insure the Goods to the Bank's reasonable satisfaction and have the Bank's interest noted on each policy or, on request, have the Bank named as first loss payee. If the Customer fails to comply, the Bank may arrange insurance.
- 6.2 on request, provide the Bank with copies of all insurance documents.
- 6.3 immediately tell the Bank of any circumstances likely to give rise to an insurance claim.
- 6.4 not take or omit any action that could invalidate the insurance.
- 6.5 promptly pay to the Bank any insurance proceeds it receives and, until payment, hold those proceeds on trust for the Bank.
- 6.6 at its cost, pursue any insurance claim that may arise or, at the Bank's request, do everything necessary to enable the Bank to pursue any claim.

## **7 Documentary L/Cs – Pledge**

7.1 The Customer with full title guarantee and as a continuing security for all amounts owing by the Customer under the Agreement, pledges to the Bank:

7.1.1 all bills of exchange and other negotiable instruments, and all documents of title, transportation, storage and other documents presented to the Bank under a Documentary LC, and

7.1.2 the Goods identified in those documents, and charges to the Bank the benefit of each insurance policy relating to the Goods.

7.2 The Bank may at any time take possession of any Goods and has power to sell the Goods, without notice to the Customer. The Bank may apply the proceeds of any sale to the Customer's liabilities in the order it decides.

7.3 The Bank will not be responsible for the Goods and documents beyond the exercise of reasonable care.

7.4 The Customer will:

7.4.1 procure endorsements of bills of lading in blank or to the order of the Bank and obtain acknowledgements or receipts from any warehouse keeper (or other third party) confirming that Goods are held for the Bank.

7.4.2 not do or permit anything that might reduce the value of the Goods and will immediately tell the Bank of anything which might affect their value or condition.

7.4.3 not dispose of, charge or pledge the Goods, without the written consent of the Bank.

7.4.4 keep the Goods and any sale or insurance proceeds from the Goods separate from any other assets or funds of the Customer.

7.5 The customer irrevocably appoints and authorizes the bank to sign on and execute all documents, do all acts, take procedures, continue, defend or settle any procedures on behalf of the customer as may be required from the bank to complete, protect and execute this undertaking.

7.6 Any purchaser or other person dealing with the Bank may assume knowledge that the Bank is acting within its rights under the Agreement and can dispose of the Goods and give a good receipt for the proceeds.



## **8 Documentary L/Cs and Guarantees – Cash Cover**

8.1 The Customer will on demand pay to an Account with the Bank in the Customer's name, an amount in the relevant currency equal to the amount payable by the Bank under a Documentary L/C or Guarantee.

8.2 The Bank may retain any credit balance on the Account and apply it to pay amounts due to the Bank from the Customer under the Agreement.

8.3 On request, the Customer will give the Bank a charge on the credit balance on the Account in the Bank's standard form.

## **9 Security**

All amounts due from the Customer under the Agreement will be secured by any security held by the Bank for the Customer's liabilities.

## **10 Fees and Costs**

10.1 The Customer will pay the Bank on demand, commission and charges in respect of each Trade Service in accordance with the Bank's standard tariff, or at other rates agreed between the Bank and the Customer.

10.2 If there is a change of law or regulation which increases the cost to the Bank of providing a Trade Service, the Bank may apply a compensating charge. The Customer will pay the amount certified by the Bank within 7 days of notice.

10.3 The Customer will pay, within 3 days of demand, all costs incurred by the Bank in connection with the Agreement or any security, including:

10.3.1 taking and discharging security.

10.3.2 preserving, defending or enforcing the Bank's rights under the Agreement or any security.

10.3.3 communicating with the Customer if the Customer breaks the terms of the Agreement.

10.3.4 all related professional fees and costs.

## **11 Payments, Set off and Currency**

11.1 All payments to the Bank must be made without set off and without any deduction on account of any tax, due or other charge, unless a deduction is required by law. If a deduction is required by law, the Customer will increase the payment so that the Bank receives the amount due to it before the deduction.

11.2 The Bank may use all amounts due on any account of the Customer account with the Bank, after affecting the transfer where necessary required. Regardless if it resulted in a debit liability on the account or exceeded the limits.

11.3 The Bank may set off any amount due to the Bank against any amount owing by the Bank to the



Customer. The Bank may exercise this right, without prior notice, both before and after demand, and to do so, may convert to one currency any amount which is in a different currency. The bank is entitled to use any of the customer's accounts, now existing or to be opened in the future, even if the numbers of such accounts were not mentioned in the agreement, to make necessary set-off as a result of any amount due to the bank.

11.4 The Bank will use its prevailing market rate of exchange at the relevant time to:

11.4.1 convert an amount in one currency to another.

11.4.2 calculate in one currency the equivalent in another currency.

## **12 Correspondent Banks and Agents**

12.1 The Bank may act through correspondent banks or agents without a need to notify the customer or obtain his/her approval.

12.2 The Bank is not responsible for any act, delay, error, default or insolvency of any correspondent bank or agent.

## **13 Documents and Communication**

13.1 All documents the Customer presents to the Bank will be valid, genuine and not tainted by fraud.

13.2 The Bank is not responsible for:

13.2.1 the authenticity of any documents presented.

13.2.2 errors in translation or interpretation of technical terms.

13.2.3 errors arising from any ambiguity in the instructions given to the Bank.

13.2.4 any delay or error in the transmission, transcription, receipt, coding or decoding of any document, message or instruction caused other than by the Bank's negligence.

## **14 Notices**

14.1 The Bank may deliver a communication in person, or by post or fax to the Customer at:

14.1.1 the contact details last known to the Bank.

14.1.2 its registered office, if applicable.

14.1.3 the Address for Service if one is specified.

14.2 A communication by the Bank will be deemed given:



14.2.1 if delivered in person, at the time of delivery.

14.2.2 if by post, at the time of delivery.

14.2.3 if by fax at the time of sending.

14.3 Any demand, notice, certificate or statements of account issued by the Bank specifying any amount due under the Agreement will, in the absence of obvious error, be conclusive.

## **15 General Terms**

15.1 The Customer will promptly provide any information regarding her/his financial condition and business as the Bank may reasonably request.

15.2 The Customer will supply any evidence required by the Bank concerning to reduction or termination of its liability under a Documentary L/C or Guarantee.

15.3 If the Customer includes two or more persons, their obligations are joint and several.

## **16 Disclosure of Information and Transfers**

The Bank may give to correspondent banks and authorized authorities any information about the Customer or the Agreement in connection with any proposed transfer of, or any financial arrangement by reference to, the Agreement. The Bank may refer to any person or to allow him to take over any of its rights and duties under the Agreement. References to the Bank include its successors.

## **17 Law**

17.1 This agreement shall be governed by and construed in accordance with the laws of State of Kuwait and laws and regulations of the Central Bank of Kuwait and subject to the jurisdiction of the Courts of State of Kuwait.

17.2 For the benefit of the Bank, the Customer irrevocably submits to the jurisdiction of the Kuwait courts and irrevocably agrees that a judgement in any proceedings in connection with the Agreement by those courts will be conclusive and binding on the Customer and may be enforced against the Customer in any other jurisdiction.

17.3 If an Address for Service is specified, it, or any other address provided for this purpose, will be an effective address for any actions carried out against the Customer.

17.4. In case of any contradiction between the Arabic and English texts, the Arabic text shall prevail.