



**Industrial and Commercial Bank of China (New Zealand)  
Limited**

**Trade Products or Services General Terms and Conditions**

Effective 1 September 2020

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## Terms and Conditions

### 1. GENERAL INFORMATION

#### 1.1 Relevant Terms

You agree that these Terms shall apply to any Trade Products or Services provided by ICBCNZ to you from time to time, in addition to any further terms and conditions set out in any Trade Finance Document.

#### 1.2 Applications for Trade Products or Services

- (a) If you want us to provide a Trade Product or Service to you, you must deliver to us an application, in the form we specify from time to time, together with any other documents we require. All documents must be properly completed, and signed by one or more of your authorised officers.
- (b) We are not obliged to make, or continue to make, any Trade Product or Service available to you, and may accept or reject any application in our discretion. We do not have to provide you with any reason for refusing to make or continue to make any Trade Product or Service available to you, or for refusing to accept and act upon any application.

#### 1.3 International Chamber of Commerce Rules

- (a) Each Credit will be subject to the UCP and the ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits.
- (b) Each Collection will be subject to the ICC Uniform Rules for Collections.
- (c) Each standby letter of credit we issue will be subject to the ISP or UCP, in each case as specified in the relevant application or instrument.
- (d) Each demand guarantee, bond or payment undertaking we issue will be subject to the ISP or the ICC Uniform Rules for Demand Guarantees, in each case as specified in the relevant application or instrument.

### 2. DEFINITIONS AND INTERPRETATION

2.1 **Interpretation:** Unless the context requires otherwise, words in these Terms which are capitalised are words with specific meanings, as set out in clause 2.3 below or in the ICC rules (as applicable) and any reference in these Terms to:

- (a) "**you**" means each person named in a Trade Finance Document as the customer. If there are more than one, it means each person jointly and individually (unless the context requires otherwise), and includes their successors and permitted assignees. "**Your**" has a corresponding meaning;
- (b) "**law**" includes common law, and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and "**lawful**" and "**unlawful**" shall be construed accordingly);
- (c) "**security interest**" includes a "security interest" (as defined in section 17 of the PPSA), a mortgage, encumbrance, lien, pledge, charge (whether fixed or floating), finance lease, deferred purchase,

sale and repurchase, flawed asset, sale and leaseback, title retention, assignment by way of security, trust, hypothecation, and any other security agreement or arrangement of whatsoever nature (however described) that in substance secures payment or performance of an obligation without regard to the form of the transaction and the identity of the parties;

- (d) "**we**" or "**ICBCNZ**" means Industrial and Commercial Bank of China (New Zealand) Limited and our successors, assignees and authorised agents. "**Our**" and "**us**" have corresponding meanings;
- (e) branches of a bank in different countries are considered to be separate banks;
- (f) any document includes that document as amended, supplemented or replaced from time to time;
- (g) any statute or a provision of a statute includes that statute or provision as amended, modified, substituted or re-enacted from time to time and any regulations and other instruments issued or made under that statute from time to time;
- (h) unless we notify you otherwise, the ICC rules which are applicable to each Credit, Standby Instrument or Collection will be those which are in effect at the relevant time, and any future revision of such rules will automatically apply when it is stated by the ICC to come into effect;
- (i) us giving you notice means public notice, press release, notices in our branches or on our website ([www.icbcnz.com](http://www.icbcnz.com)), mail to the address you have advised to us, or such other method as we see fit; and
- (j) our website means [www.icbcnz.com](http://www.icbcnz.com).

2.2 In the event of any conflict between:

- (a) these Terms and the terms in any ICC rules or any other rules, these Terms will prevail; or
- (b) these Terms and a Trade Finance Document or any other agreement or arrangement between us and you, we may at our discretion determine which shall prevail.

2.3 **Defined Terms:**

"**Advising Bank**" shall have the meaning ascribed to the term in the UCP.

Guidance Note:

As at 12 August 2020, UCP 600 defines Advising Bank as:

The bank that advises the Credit at the request of the Issuing Bank.

"**Business Day**" means any day other than a Saturday or Sunday on which registered banks are open for normal banking business in Auckland.

"**Bill of Exchange**" means a bill of exchange as defined in the Bills of Exchange Act 1908.

"**Collection**" shall have the meaning ascribed to the term in the ICC Uniform Rules for Collections and

"**Collecting**" shall have a corresponding meaning.

Guidance Note:

As at 12 August 2020, ICC Uniform Rules for Collections 522 (dated 1 July 1995) define Collection as:

The handling by banks of documents as defined in sub-Article 2(b), in accordance with instructions received, in order to:

- i obtain payment and/or acceptance; or
- ii deliver documents against payment and/or against acceptance; or
- iii deliver documents on other terms and conditions.

"**Complying Presentation**" shall have the meaning ascribed to the term in the UCP.

Guidance Note:

As at 12 August 2020, UCP 600 defines Complying Presentation as:

A Presentation that is in accordance with the terms and conditions of the Credit, the applicable provisions of these [UCP] rules and international standard banking practice.

"**Confirmation**" shall have the meaning ascribed to the term in the UCP, and "**Confirm**" and "**Confirmed**" shall be construed accordingly.

Guidance Note:

As at 12 August 2020, UCP 600 defines Confirmation as:

A definite undertaking of the Confirming Bank, in addition to that of the Issuing Bank, to Honour or Negotiate a Complying Presentation.

"**Confirming Bank**" shall have the meaning ascribed to the term in the UCP.

Guidance Note:

As at 12 August 2020, UCP 600 defines Confirming Bank as:

The bank that adds its Confirmation to a Credit upon the Issuing Bank's authorisation or request.

"**Correspondent Bank**" means any bank which provides any banking or other services at our request in connection with a Trade Product or Service.

Guidance Note:

As at 12 August 2020, UCP 600 defines Credit as:

Any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the Issuing Bank to Honour a Complying Presentation.

"**Costs**" means any costs, charges, fees, commissions, indemnities, Taxes, damages, losses, expenses (including legal fees and expenses on a full indemnity basis and goods and services and similar Taxes thereon), claims, liabilities (absolute or contingent), fines and penalties and includes loss of profit and costs incurred in liquidating or redeploying deposits or other funds.

"**Credit**" shall have the meaning ascribed to the term in the UCP.

"**Documents**" means Bills of Exchange, bills of lading and all other documents of title, transport documents, insurance policies, invoices and all other documents which evidence and are necessary to manage, collect, recover and enforce payment for Goods or Services (whether pursuant to a Credit) and, in relation to a Collection, shall also have the meaning ascribed to the term in the ICC Uniform Rules for Collections.

"**Export Collection**" means a Collection where we act on your behalf for collecting and receiving payment for a shipment.

"**Export Credit**" means a Credit issued by another bank in your favour which we Honour, Negotiate, Present, transfer, finance and/or Confirm or give an Independent Undertaking at your request.

"**Force Majeure Event**" means any event or circumstance beyond our or your reasonable control (whether foreseeable or not), including:

- (a) acts of God, including fire, earthquake, storm, landslide, flood, washout or other natural event;
- (b) strike, lock-outs or other labour dispute or war, insurrection, sabotage, terrorism, riot or civil disturbance;
- (c) pandemics, epidemics or viral outbreaks;
- (d) acts of or failure to act by any Regulatory Authority and changes in law or any order of any Regulatory Authority;
- (e) restriction or impending restriction on the availability, credit or transfer of foreign exchange;
- (f) failure, disruption or interference failures of any telecommunication, electricity supply, internet or other utilities;
- (g) technical failure, disruptions, corruption or interference to any computer system; or
- (h) failure or disruption of or interference with any product or service provided by any third party, including Correspondent Banks or the acts of or failure to act of that third party.

"**Funded Transaction**" means where we agree (in our sole discretion) either immediately or on acceptance of the Documents by the Issuing Bank to finance and make a prepayment to you of an amount up to the maximum amount specified under an Export Credit to which we have added our Confirmation or Independent Undertaking to.

"**Goods**" mean the goods or produce described in the relevant Credit, invoice or sales contract.

"**Honour**" shall have the meaning ascribed to the term in the UCP and "**Honoured**", "**Dishonour**" and "**Dishonoured**" shall have a corresponding meaning.

Guidance Note:

As at 12 August 2020, UCP 600 defines Honour as:

- (a) to pay at sight if the Credit is available by sight payment.
- (b) to incur a deferred payment undertaking and pay at maturity if the Credit is available by deferred payment.
- (c) to accept a bill of exchange ("draft") drawn by the beneficiary and pay at maturity if the Credit is available by acceptance.

"**ICC**" means the International Chamber of Commerce.

"**ISP**" means the ICC International Standby Practices.

"**Import Collection**" means a Collection we carry out as collecting and/or Presenting bank for collecting and remitting payment for a shipment from an overseas exporter.

"**Import Credit**" means a Credit we issue at your request.

"**Independent Undertaking**" means an undertaking between you and us, in addition to and separate from the underlying Credit issued by the Issuing Bank, to make payment in respect of a Complying Presentation on a "without recourse" basis as set out in clause 5.3.

"**Issuing Bank**" shall have the meaning ascribed to the term in the UCP.

Guidance Note:

As at 12 August 2020, UCP 600 defines Issuing Bank as:

The bank that issues a Credit at the request of an applicant or on its own behalf.

"**Negotiation**" shall have the meaning ascribed to the term in the UCP and "**Negotiate**", "**Negotiations**", "**Negotiating**", "**Negotiated**" shall have a corresponding meaning.

Guidance Note:

As at 12 August 2020, UCP 600 defines Negotiation as:

The purchase by the Nominated Bank of drafts [Bills of Exchange] (drawn on a bank other than the Nominated Bank) and/or Documents under a Complying Presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the Nominated Bank.

"**Nominated Bank**" shall have the meaning ascribed to the term in the UCP.

Guidance Note:

As at 12 August 2020, UCP 600 defines Nominated Bank as:

The bank with which the Credit is available or any bank in the case of a Credit available with any bank.

"**PPSA**" means the Personal Property Securities Act 1999.

"**Presentation**" shall have the meaning ascribed to the term in the UCP and "**Present**", "**Presenter**", "**Presenting**" and "**Presented**" shall have a corresponding meaning.

Guidance Note:

As at 12 August 2020, UCP 600 defines Presentation as:

Either the delivery of Documents under a Credit to the Issuing Bank or the Nominated Bank or the Documents so delivered.

"**Regulatory Authority**" means local or foreign governments and their instrumentalities.

"**Regulations**" means laws including, without limitation, any subordinate instrument, and the acts, practices and policies of Regulatory Authorities, whether or not having the force of law. Regulations may be those in any place where we or any other financial service provider involved in a Trade Product or Service (including a Correspondent Bank) operates, or with which the Trade Product or Service has some direct or indirect connection, or to which or from which a payment or instruction is made or received or in which some other thing is done, or may be the Regulations of or applicable to the currency of payment. Regulations include, but are not limited to, those which affect, restrict, prohibit or otherwise render unlawful transactions, payments or dealings with assets, countries, any person, group or entity.

"**Reimbursing Bank**" means the bank with which the Issuing Bank maintains an account and which is authorised by the Issuing Bank to charge that account to pay claims received from the Negotiating bank for documents that have been Presented.

"**Security Interest**" has the meaning given to it by section 17 of the PPSA except in respect of any real property and any other property to which the PPSA does not apply, in which case "**Security Interest**" includes a charge over such property.



**"Secured Moneys"** means all amounts that at any time are due and owing by you to us, or you owe to us but are not then due, or you owe to us upon a contingency (directly or indirectly and for any reason) in connection with any Trade Product or Service provided to you.

**"Secured Property"** means your present and future interests in the Documents and Goods and their proceeds now or at any time delivered to, or deposited with you or us or are otherwise in your or our possession, custody or control or where we have issued an Import Credit, in the possession of a Nominated Bank.

**"Services"** means the services described in the relevant Credit, invoice or sales contract.

**"Standby Instrument"** means a standby letter of credit, performance bond, advance payment bond, bid bond/tender bond, demand guarantee and such other instruments as we agree to issue pursuant to clause 9 from time to time, and further includes any counter-indemnity issued by us in favour of our Correspondent Bank to facilitate the issuance of any of the above-mentioned instruments by our Correspondent Bank.

**"Taxes"** means any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including interest, penalties, fines and charges in respect of the Taxes) imposed, levied, collected, withheld or assessed by any Regulatory Authority, on whomsoever imposed, levied, collected, withheld or assessed.

**"Terms"** means these Trade Products or Services General Terms and Conditions.

**"Trade Finance Document"** means any agreement, letter, application or other document setting out the terms and conditions of a Trade Product or Service and includes each security interest provided to us from time to time in connection with a Trade Product or Service.

**"Trade Product or Service"** means any trade related product, service or facility provided by us to you in connection with the purchase, sale, storage, release, preparation or shipment of, or other dealings in, Goods or the performance of Services and **"Trade Products or Services"** shall have a corresponding meaning.

**"UCP"** means the Uniform Customs and Practices for Documentary Credits of the ICC.

### **3. IMPORT CREDITS AND IMPORT COLLECTIONS**

#### **3.1 Application of Provisions**

The terms in this clause 3 and the terms in clause 11 apply to Import Credits and Import Collections.

#### **3.2 Issue of Import Credits**

- (a) We may issue Import Credits in such a form that we consider appropriate. It is solely your responsibility to ensure that the terms and conditions (and any applicable requirements) of an Import Credit are satisfactory to you. We have no responsibility to advise you on any such issues.
- (b) You must deliver to us a duly completed Application for Irrevocable Documentary Credit.

- (c) Each Import Credit we issue will be an irrevocable transaction, separate from any contract or other arrangement between you and any other person in relation to which the Import Credit is issued. We will satisfy our obligations under the Import Credit issued by us, irrespective of any instructions from you to the contrary.
- (d) We may, at our discretion, restrict Negotiations under any Import Credit to our own offices or to any Correspondent Bank we choose.
- (e) If there are any issues relating to the terms of the Import Credit (including whether it conforms to any application), you must notify us within 2 Business Days after receiving your copy of the Import Credit or you will be deemed to have accepted the terms of the Import Credit and waived any rights to raise any issues in connection with that Import Credit.

### **3.3 Claims under Import Credits**

- (a) If we believe the Documents comply with the terms of the Import Credit and there is otherwise a Complying Presentation, we may make any payment or accept any Bill of Exchange under the Import Credit without reference to you or making any further enquiry, and notwithstanding any notice from you not to do so.
- (b) If, as contemplated by clause 3.2(d), we have restricted the Negotiation of the Import Credit to our own offices or to any Correspondent Bank we choose, we may accept and pay all Documents drawn or purported to be drawn on any such office or Correspondent Bank.
- (c) Unless we agree otherwise in writing, you must pay to us all amounts we pay under the Import Credit on or before the day on which we make or are required to make that payment. We may hold all or part of such amounts in an account in our name and under our sole control and/or apply all or part of such amounts against your reimbursement obligations to us.

### **3.4 Discrepancies in Documents**

- (a) We may, without reference to you or making any further enquiry, refuse to Honour any Documents if we believe that they are not compliant with the requirements of the Import Credit or there is otherwise a non-Complying Presentation and we are not obliged to notify you of any such determination by us.
- (b) If we (at our discretion) ask if you are willing to give any waiver of any discrepancies in the Documents or non-Complying Presentation, you must notify us within 2 Business Days of your decision as to whether to waive. If you confirm you are willing to give such a waiver, you will indemnify us in respect of any payments we make and Costs we incur in connection with the Import Credit, notwithstanding the discrepancies in the Documents or non-Complying Presentation. If we do not hear from you within the 2 Business Days period, we may return the Documents to the Presenter.
- (c) Irrespective of whether there is any discrepancy in relation to the Documents or any other non-Complying Presentation, if you request us to authorise the release or delivery of Goods drawn under an Import Credit, and we agree, you agree to waive all discrepancies in relation to the Documents (where applicable) and accept such Documents Presented under the Import Credit and

indemnify us in respect of any Costs we suffer or incur in connection with the relevant Import Credit.

### 3.5 Insurance

- (a) Where an Import Credit is issued on the basis of "insurance buyer's care" you must insure the Goods to our satisfaction from loss or capture at sea and provide such evidence of insurance, its terms, and its currency within 2 Business Days of our request.
- (b) If we determine that the insurance is not acceptable, we may, at your cost, arrange further or other insurance (including war risk) in connection with the Goods.

### 3.6 Import Collections

- (a) If we act as a Collecting bank in connection with Import Collections and Bills of Exchange for acceptance or payment, or Documents on a cash against Documents basis, we may hold the Documents until acceptance or reimbursement of the relevant Bills of Exchange, or payment, by you.
- (b) We will outline any additional terms applicable to any Import Collection in the correspondence we attach to the Import Collection.

### 3.7 Security Interest over Documents and Goods

- (a) As a continuing security for the payment to us of Secured Moneys in connection with an Import Credit or Import Collection service provided to you, you grant us a Security Interest over the Secured Property.
- (b) You agree that until the Secured Moneys are paid in full, you will not create, allow to be created or permit to exist any other security interest in favour of anyone other than us over the Secured Property.
- (c) You will provide us with all the information relating to the Secured Property as we from time to time require.
- (d) Notwithstanding any other provision of these Terms or of any Trade Finance Document, but subject to any applicable law, you irrevocably authorise us to at any time and without notice, enter any premises owned, occupied or used by you to search for and inspect or take possession or custody of the Secured Property or take such other steps as we reasonably consider necessary or desirable to protect our Security Interest.

### 3.8 Our remedies

- (a) If you fail to comply with your obligations to us in connection with an Import Credit or Import Collection, then without prejudice to any of our other rights and remedies, you:
  - (i) irrevocably authorise us at our discretion and without notice to you to:
    - (1) land, dock, store, transport, insure and/or sell or otherwise dispose of the relevant Goods, or any part of the relevant Goods, on such terms as we think fit; and/or

- (2) deal with the relevant Documents in any way we think appropriate; and/or
  - (3) collect any money payable under any applicable insurance policies.
- (ii) must pay to us on demand the amount of any deficiency on such sale, dealing or insurance and all Costs incurred by us in connection with any actual or attempted matters referred to in clause 3.8(a)(i) above; and
  - (iii) agree that we are not liable for any Costs suffered or incurred by you as a consequence of any of the foregoing.

### **3.9 Limit on our responsibilities**

- (a) In addition to the disclaimer on the effectiveness of documents in the UCP, to the maximum extent permitted by law, neither we nor our correspondents are liable or responsible for, nor will your obligations under these Terms or in relation to any Import Credit be reduced, terminated or affected in any way adverse to us by:
  - (i) any carriers' fees in relation to the Goods, including for storage and landing;
  - (ii) our granting of any time, credit, indulgence or other concession to any person;
  - (iii) any failure of any person to obtain any approval or licence necessary or desirable in connection with these Terms or the Import Credit;
  - (iv) performance of the Import Credit or any other agreement being or becoming impossible or illegal as result of any act of any Regulatory Authority, or any Regulation affecting the terms of the Import Credit or the occurrence of any Force Majeure Event;
  - (v) us or any other bank agreeing to any variations in the instructions relating to the Import Credit made necessary or desirable by the Regulations and/or commercial practice of the country in which any Bill of Exchange is Negotiated or Presented for acceptance or payment; or
  - (vi) any other matter or thing which would otherwise affect our liability or responsibility or obligations, our correspondents or you.

### **3.10 Dealing with Documents and Goods**

- (a) The Secured Property will be entirely at your risk and we will not be responsible for any loss or damage or decrease in value of any Secured Property.
- (b) If we release any or all of the Documents to you to enable you to obtain delivery of the Goods prior to the payment in full of the Secured Moneys:
  - (i) you will only deal with the Goods in accordance with our instructions from time to time to protect our interests and, if required by us, you will provide us with a trust receipt on terms satisfactory to us;
  - (ii) you will hold the Documents, and the Goods when received, in safe custody and (in the case of Goods, but for the avoidance of doubt, not Documents) exclusively for the purpose of

their sale or other disposition approved by us at full market value and in the ordinary course of business;

- (iii) if you choose not to accept any Documents, you will return all Documents to us within 48 hours of receipt of the Documents from us;
- (iv) until sale or delivery (if applicable), you will at your cost:
  - (1) warehouse the Goods in our name so that they are clearly distinguishable from goods of a similar nature;
  - (2) not obliterate, alter, deface, remove or obscure any identifying numbers, plates, marks or other matter affixed to the Goods;
  - (3) maintain the Goods in sellable condition;
  - (4) not permit the Goods to be processed or altered or incorporated into any other goods without our consent; and
  - (5) immediately deliver to us any warrants or receipts for the Goods (if issued);
- (v) you will:
  - (1) keep all Goods insured with a reputable insurer at all times:
    - A. for their full insurable value (which we may specify); and
    - B. against fire and any other usual risks that a prudent owner of property of a similar type would insure, and any other risk, loss or damage of any kind that we from time to time require,and, upon our request, note our interest on the relevant certificate(s) of insurance (in the form as we may require);
  - (2) deliver to us the policies or certificates of insurance for all such insurance or (if we consent) copies of those policies or certificates, certified as true and correct by the relevant insurer, and if required by us confirmation that our interests have been duly noted by the insurer;
  - (3) in case of loss, pay the insurance moneys to us in the same manner as proceeds of sale and make good any deficiency;
- (vi) you will:
  - (1) immediately pay all proceeds of any sale or other disposal of the Goods to us, without deduction or set-off, and until you do so, hold the proceeds and the rights against the purchaser arising from the sale or disposal clearly distinguishable from proceeds of a similar nature;
  - (2) do all things we require to enable us to directly receive any outstanding proceeds of any sale or other disposal of the Goods from any purchaser or other person;

- (3) keep separate records of all sales of the Documents and Goods.
- (c) We may demand delivery and endorsement to us of all Documents and exercise all your rights (if any) as unpaid seller of the Goods.

#### **4. EXPORT COLLECTIONS AND EXPORT CREDITS**

##### **4.1 Application of Provisions**

The terms in this clause 4 and the terms in clause 11 apply to Export Collections and Export Credits.

##### **4.2 Export Collections**

- (a) You must provide us with a duly completed Collections lodgement authority, together with all Documents that are required to be sent for Collection pursuant to the Collections lodgement authority.
- (b) We are not obliged to check the Documents before sending them to the Collecting bank. If we do agree to check the Documents, you agree that we will not have any liability to you if we fail to identify any discrepancy or irregularities of any kind.
- (c) We will only pay you proceeds of a Collection which have actually been received by us in cleared funds from the Collecting bank.
- (d) We may (at our discretion), at your request, purchase a Bill of Exchange under a trade finance facility.

##### **4.3 Export Credits**

- (a) You may request us to (but we are not obliged to):
  - (i) Honour or Negotiate Documents and pay proceeds to you:
    - (1) immediately; or
    - (2) upon acceptance of the Documents by the Issuing Bank; or
  - (ii) without Honour or Negotiation, Present Documents to the Issuing Bank for payment, and pay proceeds to you only when we receive payment from the Issuing Bank or Reimbursing Bank.
- (b) You must provide us with a duly completed Export Credit lodgement authority, together with all Documents required under the Export Credit including, if we are not the Advising Bank, the originals of the Export Credit and all amendments to it.

##### **4.4 Additional Terms**

- (a) Any Bill of Exchange purchased and/or Export Credit Negotiated by us under a trade finance facility will be subject to the terms and conditions applicable to that trade finance facility.

- (b) If you request us to purchase, Honour or Negotiate any Bill of Exchange or Export Credit, you are deemed to have represented to us that you have shipped or delivered the Goods or fully performed the Services (as the case may be) described in the relevant Documents for the buyer.

## **5. CONFIRMATION AND INDEPENDENT UNDERTAKINGS OF EXPORT CREDITS**

### **5.1 Application of Provisions**

The terms in this clause 5 and the terms in clause 11 apply to a Confirmation or Independent Undertaking by us of an Export Credit.

### **5.2 Confirmation**

- (a) You may request us to Confirm an Export Credit. You must provide us with any documents and other information we require for us to assess the request, including a complete original Export Credit (and all amendments). We are not obliged to accept a request and may (at our discretion) only do so if all elements relating to the Export Credit are satisfactory to us in our absolute discretion and you agree to satisfy any conditions we advise to you.
- (b) We will only consider a request to add our Confirmation to an Export Credit which is subject to the UCP, and has us as the Nominated Bank or otherwise is freely negotiable with any bank.
- (c) Where we add our Confirmation to an Export Credit, such Confirmation will be subject to clause 11.20.
- (d) We will not be bound by our Confirmation of an Export Credit to the extent the Export Credit is amended or an amendment is rejected without our prior written consent. Where, in our sole opinion, the amendment increases the value or extends the validity of the Export Credit, you agree to pay us such further fees and charges that we may advise you where we extend our Confirmation to the relevant amendment.
- (e) You must present to us:
  - (i) the original Export Credit and all amendments (if any) to the Export Credit;
  - (ii) as soon as they are available, and within any timeframes we may specify, all of the Documents required under the Export Credit, each of which must be fully compliant with the requirements of the Export Credit to enable a Complying Presentation.
- (f) If we are satisfied with the full compliance of the original Export Credit and Documents presented in accordance with clause 5.2(e) such that there will be a Complying Presentation, then subject to clause 5.2(h) below:
  - (i) we will dispatch the Documents to the Issuing Bank (or Nominated Bank, if applicable) for acceptance and/or payment in accordance with the terms of the Export Credit;
  - (ii) (in respect of a Funded Transaction) we will immediately pay you the amount claimed under the relevant Documents up to the Confirmed amount, less our charges (including interest) and Costs; and

- (iii) (in respect of an un-Funded Transaction) if the Issuing Bank or Reimbursing Bank does not pay all or any part of the amount claimed within 30 calendar days of the due date under the Export Credit, then we will pay you the unpaid amount claimed under the relevant Documents up to the Confirmed amount, less our charges and Costs.

All charges (including interest) and Costs are final and non-refundable.

- (g) At the time you present fully compliant Documents that will enable a Complying Presentation, you may request us to Honour, Negotiate or (at our discretion) finance the Export Credit and/or Documents and to pay proceeds (less our charges (including interest, if any) and Costs) to your account (either immediately or on acceptance of the Documents by the Issuing Bank). Our Confirmation of the Export Credit, and all our obligations in connection with it, will end when we have paid those proceeds to you.
- (h) Without limiting the application of clause 11.20, if there is any defect in your title to the Export Credit or Documents (including where an encumbrance or third party claim exists over your title), or if the bank on which the Export Credit is drawn exercises a right of set-off in respect of any obligation owed by you to it, then you agree to refund all of the sums we have paid under the Confirmation or such part as we determine may be affected, together with interest thereon calculated in accordance with clause 11.6.
- (i) If we are not satisfied with the full compliance of the original Export Credit and Documents presented in accordance with clause 5.2(e) such that there will not be a Complying Presentation, our Confirmation ends and we have no obligation to make any payment to you under the Confirmation.
- (j) You may request us to dispatch discrepant Documents under a non-Complying Presentation to the Issuing Bank and Negotiate the relevant Documents and to credit proceeds of the Negotiation to you on acceptance of the non-Complying Presentation for payment by the Issuing Bank. We may accept or reject such requests in our absolute discretion, and you will indemnify us on demand against any Costs incurred or suffered by us in acting in accordance with your request.
- (k) We may, at our discretion, register a financing statement against you in respect of the deemed security interest arising from the transfer of any receivables in connection with a Negotiation.

### 5.3 Independent Undertaking

- (a) You may request us to add our Independent Undertaking to your Export Credit. We will not become a formal party to the Export Credit. You must provide us with any documents and other information we require for us to assess the request, including a complete original Export Credit (and all amendments). We are not obliged to accept your request and may (at our discretion) only do so if all elements relating to the Export Credit are satisfactory to us in our absolute discretion and you agree to any conditions we advise to you.
- (b) We will only consider a request for an Independent Undertaking to an Export Credit which is subject to the UCP, and has us as the Nominated Bank or otherwise is freely negotiable with any bank.
- (c) Any Independent Undertaking we provide will be subject to clause 11.20.



- (d) We will not be bound by our Independent Undertaking in respect of an Export Credit to the extent the Export Credit is amended or an amendment is rejected without our prior written consent. Where, in our sole opinion, the amendment increases the value or extends the validity of our Independent Undertaking, you agree to pay us such further fees and charges that we may advise you where we extend our Independent Undertaking to the relevant amendment.
- (e) You must present to us:
- (i) the original Export Credit and all amendments (if any) to the Export Credit;
  - (ii) as soon as they are available, and within any timeframes we may specify, all of the Documents required under the Export Credit, each of which must be fully compliant with the requirements of the Export Credit to enable a Complying Presentation.
- (f) If we are satisfied with the full compliance of the original Export Credit and Documents presented in accordance with clause 5.3(e) such that there will be a Complying Presentation, then subject to clause 5.3(h) below:
- (i) we will dispatch the Documents to the Issuing Bank (or Nominated Bank, if applicable) for acceptance and/or payment in accordance with the terms of the Export Credit; and
  - (ii) (in respect of a Funded Transaction) we will immediately pay you the amount claimed under the relevant Documents up to the stated financing amount under our Independent Undertaking, less our charges (including interest) and Costs ; and
  - (iii) (in respect of an un-Funded Transaction) if the Issuing Bank or Reimbursing Bank does not pay all or any part of the amount claimed within 30 calendar days of the due date under the Export Credit, then we will pay you the unpaid amount claimed under the relevant Documents up to the relevant confirmation amount, less our charges and Costs.
- All charges (including interest) and Costs are final and non-refundable.
- (g) At the time you present fully compliant Documents that will enable a Complying Presentation, you may request us to Negotiate or (at our discretion) finance the Export Credit and/or Documents and to pay the proceeds (less our charges (including interest, if any) and Costs) to your account (either immediately or on acceptance of the Documents by the Issuing Bank). Our Independent Undertaking in respect of the Export Credit, and all our obligations in connection with it, will end when we have paid those proceeds to you. If we agree to Negotiate the Export Credit and/or Documents, all the rights, title and interest and proceeds previously assigned by you to us under clause 5.3(k) of these Terms shall be deemed to instead be acquired by us pursuant to the Negotiation.
- (h) Without limiting the application of clause 11.20, if there is any defect in your title to the Export Credit or Documents (including where an encumbrance or third party claim exists over your title), or if the bank on which the Export Credit is drawn exercises a right of set-off in respect of any obligation owed by you to it, then you agree to refund all of the sums we have paid under the Independent Undertaking or such part as we determine may be affected, together with interest thereon calculated in accordance with clause 11.6.

- (i) Should discrepancies exist between the Documents and the Export Credit, or it otherwise not be certain that there will be a Complying Presentation, we will be under no obligation to pay under the Independent Undertaking. We may, in our absolute discretion, agree to pay under the Independent Undertaking upon acceptance of any discrepancies by the Issuing Bank and us having received authenticated confirmation of this from the Issuing Bank.
- (j) In the event we make payment to you under our Independent Undertaking, and it subsequently transpires that the Issuing Bank rejected the payment under the Export Credit on the basis that the Documents Presented do not comply with the terms of the Export Credit or otherwise being part of a non-Complying Presentation or clause 11.20 applies, you undertake to refund to us on demand all moneys so paid, together with interest thereon calculated in accordance with clause 11.6.
- (k) Upon our supply to you with an Independent Undertaking, you assign and transfer to us absolutely all your present and future rights, title, interests and benefits in and to the receivables and proceeds payable to you under or in connection with the relevant Export Credit. Until such transfer, you shall hold such rights, title and interests and proceeds on trust for us and do all things as may be necessary to give effect to such assignment to us. In addition, you agree and undertake that you will not deal with the Goods or the Documents without our prior written consent where such dealing may have an adverse effect on the amount payable under the relevant Export Credit.
- (l) You represent and warrant that you have the power and right to make the assignment and that the relevant rights assigned to us under clause 5.3(k) are and will at all times be legally binding and enforceable.
- (m) Notwithstanding the above, if you or we become aware of a default in payment by the Issuing Bank, we may give you notice in writing to terminate our obligations under any outstanding balance of the Export Credit that remains undrawn. Such a notice will not in any way affect our previous Negotiations under the Export Credit before the giving of the notice. We will also refund to you a pro-rata portion of the Independent Undertaking fee paid for the undrawn balance of the Export Credit.
- (n) We may, at our discretion, register a financing statement against you in respect of the deemed security interest arising from the transfer of any receivables in connection with the rights assigned in clause 5.3(k) or under a Negotiation.

#### 5.4 **Confidentiality**

You agree that you will not, unless required to do so by law, disclose the existence of any Confirmation or Independent Undertaking arrangement we have entered into or any of its provisions to any other person without our prior written consent.

## 6. **TRANSFER OF EXPORT CREDITS**

### 6.1 **Application of Provisions**

The terms in this clause 6 and the terms in clause 11 apply if we agree to transfer an Export Credit from you as beneficiary to another beneficiary (the "**Second Beneficiary**").

## 6.2 **Transfer**

- (a) If we agree to transfer an Export Credit from you to another beneficiary, you must provide us a duly completed Application for transfer of Export Letter of Credit all Documents which we specify are required to substitute for any of the Second Beneficiary's Documents and the original Export Credit (and all amendments). You shall be solely responsible for the transfer of any Export Credit undertaken by us at your request.
- (b) Unless you instruct us to the contrary in your application, we will substitute your Bills of Exchange and invoices for those presented by the Second Beneficiary, and deliver to you the invoices of the Second Beneficiary.
- (c) If you fail to deliver your Bills of Exchange and invoices to us in compliance with the terms of the Export Credit so as to enable a Complying Presentation, we may forward the documents accompanying the Bills of Exchange of the Second Beneficiary without any responsibility to pay you the difference between the amount of the Second Beneficiary's Bills of Exchange and the amount authorised to be paid under the Export Credit.
- (d) We will only pay out proceeds under the Export Credit which have actually been received by us from the Issuing Bank, Confirming Bank or Reimbursing Bank (as applicable), less any Costs and charges due to us.
- (e) Subject to clause 6.2(b) you will cease to have any rights as the beneficiary of the Export Credit to the extent those rights have been transferred to the Second Beneficiary.

## 7. **PAYMENT OF ASSIGNED EXPORT CREDIT PROCEEDS**

### 7.1 **Application of Provisions**

The terms in this clause 7 and the terms in clause 11 apply if you advise us that you have assigned the proceeds of an Export Credit to a third party (the "Payee").

### 7.2 **Payment**

- (a) An assignment by you to a Payee must be an unconditional assignment of all or part of the proceeds of an Export Credit.
- (b) You shall be solely responsible for ensuring the enforceability and effectiveness generally of the assignment.
- (c) You represent to us that you have the power and right to make the assignment and that the relevant proceeds being assigned are not subject to any encumbrance or claims from any third party.
- (d) All payment instructions you give to us to pay the Export Credit proceeds to the Payee are irrevocable unless the Payee gives written authority to cancel or modify them.
- (e) You will not, either by Negotiation or otherwise, further assign any right to such proceeds nor issue additional instructions for payment thereof.

- (f) We will only pay Export Credit proceeds to the Payee:
  - (i) if you have delivered to us a duly completed Assignment of Proceeds;
  - (ii) if documentation is Presented under and in conformity with the Export Credit as part of a Complying Presentation; and
  - (iii) after actual receipt of the Export Credit proceeds by us from the Issuing Bank, Confirming Bank or Reimbursing Bank (as applicable).

## **8. SHIPPING GUARANTEE/INDEMNITY AND SHIPPERS RELEASE**

### **8.1 Application of Provisions**

The terms in this clause 8 and the terms in clause 11 apply to any guarantee or other undertaking ("**Guarantee(s)**") provided by us to shipping companies, carriers or consignors of Goods or other persons ("**Beneficiaries**") to enable you to obtain replacement bills of lading, transport or title documents and/or delivery of Goods.

Each Guarantee shall be in the form acceptable to us (in our sole discretion).

### **8.2 Dealing with documents**

- (a) Unless we agree to otherwise, if we provide a Guarantee to a Beneficiary, you must:
  - (i) use all reasonable endeavours to obtain the relevant bills of lading, transport or title documents and deliver them to the Beneficiaries as soon as practicable so we can be released from our liability under the Guarantee(s) and the Guarantee(s) can be returned to us for cancellation;
  - (ii) accept all Documents relating to the relevant Goods regardless of any discrepancy or irregularity or dispute with the supplier or third party;
  - (iii) waive all discrepancies or irregularities under the related Import Credit even if the discrepancy has not been notified, the Documents have not been presented or the Import Credit has expired; and
  - (iv) authorise us to Honour any drawings under the relevant Import Credit without examining the Presented Documents,

and you shall indemnify us in respect of any payments we make and Costs we incur irrespective of any discrepancies or irregularities that may appear on the Documents or under the related Import Credit.

- (b) You will deposit with us such amounts and/or provide such security as we may require in connection with the Guarantee(s) until such Guarantee(s) are returned to us for cancellation.
- (c) Without limiting any Security Interest over the Secured Property under clause 3.7 that we may have, until we have been fully released and discharged from the Guarantee(s), the Documents, the Goods to which they relate and any proceeds of sale or insurance shall be received and held in trust for us.

- (d) You will indemnify us on demand against any payment we make under the Guarantee(s) and Costs we may suffer or incur in connection with the Guarantee(s).

## **9. STANDBY INSTRUMENTS**

### **9.1 Application of Provisions**

The terms in this clause 9 and the terms in clause 11 apply to the issue of Standby Instruments.

### **9.2 Issue of Standby Instruments**

- (a) We may issue Standby Instruments in such a form that we consider appropriate. It is solely your responsibility to ensure that the terms and conditions (and any applicable requirements) of any Standby Instrument are satisfactory to you. We have no responsibility to advise you on any such issues.
- (b) You must provide us a duly completed Application for a Standby Instrument.
- (c) You will deposit with us such amounts and/or provide such security as we may require in connection with the Standby Instrument until such Standby Instrument is cancelled in a manner satisfactory to us.
- (d) We may arrange for the Standby Instrument to be issued by our Correspondent Bank on such terms as we or our Correspondent Bank may decide and may issue a counter-indemnity in favour of such Correspondent Bank.
- (e) If there are any issues relating to the terms of the Standby Instrument (including whether it conforms to any application), you must notify us within 2 Business Days after receiving your copy of the Standby Instrument or you will be deemed to have accepted the terms of the Standby Instrument and waived any rights to raise any issues in connection with that Standby Instrument.

### **9.3 Payments under the Standby Instrument**

- (a) Each Standby Instrument will be irrevocable and is a separate transaction from any contract or other dealing between you and any other party. It will be binding on us regardless of what may occur or be alleged in any other contract or dealing. Accordingly, you accept that where any demand for the payment of any sum of money under the Standby Instrument is made, such demand shall be sufficient authority to us for making any such payment up to the maximum amount specified in the Standby Instrument and it shall not be incumbent upon us to enquire whether any such sum of money is in fact properly payable or enquire as to the form, accuracy, authority or legal effect of any signature or document presented to us. We may make any payment or accept any Bill of Exchange, claim or drawing under the Standby Instrument without reference to you or further enquiry, and notwithstanding any notice from you not to do so.
- (b) If we consider that a demand, Bill of Exchange or other document presented under a Standby Instrument does not comply with the terms of the Standby Instrument:
  - (i) we may (without reference to you or making any further enquiry) refuse the demand by notice to the party from which we received the demand, Bill of Exchange or the other document; and

- (ii) we are not obliged to notify you of any determination or refusal by us, or to seek your waiver in respect of the same, prior to our determination or refusal.
- (c) We may, at any time and whether or not we have received a demand, discharge all our obligations under an unexpired Standby Instrument by paying the undrawn amount of the unexpired Standby Instrument (or such lesser amount that the beneficiary requires) to the beneficiary.
- (d) You will indemnify us on demand against any payment we make under the Standby Instrument and Costs we may suffer or incur in connection with the Standby Instrument, together with interest thereon calculated in accordance with clause 11.6.
- (e) You agree to take prompt steps to obtain cancellation of the Standby Instrument in a manner satisfactory to us on completion or termination of the contract to which it relates.

## **10. TRADE FINANCE FACILITIES**

### **10.1 Application of Provisions**

The terms in this clause 10 and the terms in clause 11 apply to any trade finance facilities we agree to make to you.

### **10.2 Conditions to Trade Finance Facilities**

- (a) You may request us to make a trade finance facility (including any Bills of Exchange purchase or Export Credit Negotiation facility) to you. You must provide us with any documents and other information we require for us to assess the request. We are not obliged to accept your request and will only do so if you have executed all documents we require and complied with the terms of all relevant documentation.
- (b) Each trade finance facility that we provide will be subject to such further terms and conditions set out in any Trade Finance Document relating to that trade finance facility.

## **11. TRADE PRODUCTS OR SERVICES - GENERAL TERMS**

### **11.1 Application of Provisions**

The following terms apply, in addition to any other specific terms set out in the preceding clauses or in any other Trade Finance Document, in respect of all (or where specified, certain) of the Trade Products or Services referred to in the preceding clauses.

### **11.2 Assessment and Understanding**

- (a) You confirm that you have fully considered the risks associated with the Trade Products or Services and that you are satisfied that such Trade Products or Services are suitable for you in the light of your circumstances.
- (b) You will be solely responsible for managing ongoing risks associated with the Trade Products or Services and decisions made to limit, manage or minimise risks. You acknowledge that any information or financial service provided by us that is intended to assist you in managing the

inherent additional risks does not and will not represent an attempt by us to act in any form of advisory or managerial capacity to you.

### 11.3 **Foreign Currency**

#### (a) Acknowledgement of Foreign Currency Risks

You acknowledge that using a Trade Product or Service in one currency where your receivables or payables are in another currency carries risks. You also acknowledge that the decision to make such transactions and the consequent associated risks, including currency fluctuations, has been made solely by you without any influence, encouragement or advice from us (other than advice as to the availability of any facility for use by you for your purposes) and in reliance on your judgment and your professional advisors (other than us and our personnel).

#### (b) Foreign currency conversion

If any amount payable by us or by you in connection with a Trade Product or Service is payable in a currency ("**Payment Currency**") different to the currency of your account from which or to which we are entitled or instructed to debit or credit that payment ("**Account Currency**") then (as applicable):

- (i) we will make the payment in the Payment Currency and we will debit an equivalent amount in the Account Currency; or
- (ii) we will credit an equivalent amount in the Account Currency to your account following receipt of the credit amount in the Payment Currency,

in accordance with our standard procedures at that time for currency conversion and (unless agreed otherwise) on the basis of our then current public exchange rate.

#### (c) Availability of foreign currency

You acknowledge that we cannot control the availability of any currency, and that we will not be responsible for any Costs which you may suffer or incur in connection with non-availability to us (after exercising reasonable endeavours) of any currency in connection with any Trade Product or Service.

### 11.4 **Compliance with laws**

- (a) You will comply with all Regulations and hold all licences, permits and other authorisations relating to the Goods and/or Services and/or Trade Products or Services.
- (b) You represent and warrant to us that the provision of the Trade Products or Services to you in accordance with your instructions will not breach any Regulations applicable to the Trade Products or Services, any of your constitutive documents or any agreement to which you are a party or which is binding on your assets.

### 11.5 Additional representations, warranties and undertakings

- (a) Where we provide you with a trade finance facility, Confirmation or Independent Undertaking in relation to a Bill of Exchange and/or Export Credit, you represent, warrant and undertake on a continuous basis on each day that money is actually or contingently owing to us that:
- (i) the Presented Documents are genuine, valid, bona fide, properly authorised and executed by the relevant parties;
  - (ii) the Goods, specifications, quantity, packing, shipping, insurance and all other terms conform with all requirements of the underlying sales contract with the buyer and the Export Credit (as applicable);
  - (iii) all import and export licences and other Regulatory Authorities' authorisations or approvals of any jurisdiction that are required for the underlying transaction (including sale, shipment and delivery of the Goods and payment for the same) have been obtained and are current; and
  - (iv) if you receive any payment from the Issuing Bank, the Confirming bank (if any) or any other person in respect of any amount payable to us or to which we are entitled to, you will immediately inform us of the same and you will promptly remit the payment to us and in the meantime hold the payment on trust and tagged as belonging to us; and
  - (v) at our request, you will (at your cost) cooperate with us fully in order to resolve any discrepancies alleged by any party in any of the Presented Documents or any other disputes regarding any payment and the recovery of any payment outstanding, including issue proceeding against the Issuing Bank (and any other persons we may require) to enforce recovery.

### 11.6 Interest and default interest

- (a) If we make any advance in connection with any Trade Product or Service including by way of purchase, discounting, Negotiation or other financing of any Bill of Exchange under an Export Credit or against any Document(s), you will pay interest, as agreed with us or, in the absence of agreement, calculated at a rate and in a manner that would be applied by us to an account you hold with us in overdraft for the same amount as is due to us by you.
- (b) If you or any other person fail to pay any amount owing to us in respect of any Trade Product or Service when that amount is due (including due to any Force Majeure Event occurring), we may charge you default interest on that amount (both before and after demand is made and/or judgement given). Default interest will accrue on a daily basis from the due date of payment to the date upon which your obligation to pay such amount is discharged. If we choose to exercise our right to charge default interest, we will advise you of the default interest rate, which will be in line with our default rates normally charged by us.



### 11.7 Fees and Costs

- (a) Please contact us for a list of the fees and charges that we may charge in connection with a Trade Product or Service (which may change from time to time). All fees, and charges are non-refundable unless we otherwise agree in writing.
- (b) You agree that we may debit all fees and charges payable by you from any account you may have with us. We may also deduct them from the proceeds of any Export Credit or Export Collection.
- (c) If we incur any Costs in relation to any Trade Product or Service or security interest, you agree to reimburse us for those Costs on demand. We may deduct those Costs from any account you may have with us. If we make any such deduction, we will give you written notice that we have done so (but any failure to do so will not relieve you of your obligation to pay our Costs).
- (d) We may increase, decrease, apply new fees and charges or change the terms of payment of any fee or charge payable in connection with a Trade Product or Service by giving you 14 days' prior notice.

### 11.8 Accounts and Set-Off

- (a) In addition to any other right we have to debit, charge or combine your accounts or set-off amounts in them, we may, from time to time without further authority than these Terms and without giving you any notice or making any demand:
  - (i) debit and charge any of your accounts with us with any amounts due to us, even though any one or more of your accounts stand in debit;
  - (ii) combine and amalgamate any two or more of your accounts with us;
  - (iii) set-off or apply in or towards satisfaction of any amounts due to us:
    - (1) sums standing to the credit of any of your accounts with us; and
    - (2) any other amounts at any time owing by us to you; and
    - (3) if, at any time, any amounts owing to us are subject to any contingency or are not quantified we may withhold payment of any of the amounts referred to in clause 11.8(a)(iii)(1) and 11.8(a)(iii)(2) and any interest or other amount owing by us, until those amounts are no longer subject to that contingency or are quantified.
- (b) To enable any of the above, we may break any term deposit you have with us and convert any amount denominated in a foreign currency into New Zealand dollars at the spot rate of exchange quoted by us at or about that time.
- (c) Our rights under this clause 11.8 exist and are exercisable:
  - (i) whether or not we have agreed to permit any set-off for the purpose of calculation of interest between any two or more accounts; and
  - (ii) even though any of your accounts are held by you together with any other person or are with our different branches.

- (d) If we require you to provide us with authority to debit an account you hold with another financial institution for any amount due and payable to us, you agree to execute any document necessary to authorise us to debit that account.

#### **11.9 Drawing or release against funds**

- (a) If we allow you to draw against funds to be collected or transferred from any account(s), and such funds are not received when due and free of any restriction, you must indemnify us for all Costs we incur in connection with us allowing such drawing.
- (b) If a payment to us by you or any other person in connection with a Trade Product or Service is avoided by law, or is recovered from us, the relevant person's obligation to make that payment and their obligations under the Documents or applicable Trade Finance Documents will not be discharged. We, you and each other person will be deemed to be put back to the position in which each would have been if that payment had not been made. Notwithstanding any release, settlement or other discharge we may have given, we may exercise all our rights we were entitled to exercise prior to that payment being made, as if that payment had not been made, and you will indemnify us for all Costs incurred by us in connection with the payment not being final.

#### **11.10 Cash Cover and additional security**

- (a) If we request (acting reasonably), you must pay us a sum up to or equal to our contingent or unmatured liability as we determine and advise to you under or in relation to any Guarantee, Standby Instrument or Import Credit.
- (b) We are not obliged to return any cash cover unless your contingent or unmatured liability(ies) cease to exist. Unless we agree in writing to you otherwise, no interest will accrue in respect of any cash cover provided.
- (c) If, at any time, we determine that the amount of a Trade Product or Service (including contingent liabilities) has increased relative to the amount of any security or payment you have provided, we may require you to:
  - (i) deposit with us on demand such additional cash cover as we may require; or
  - (ii) provide additional security for your obligations under the Trade Products or Services, such security to be of a type and value and in all other respects acceptable to us; or
  - (iii) reduce the amount of the Trade Product or Service.

#### **11.11 Payments to be Free and Clear**

- (a) All sums payable by you to us in connection with a Trade Product or Service shall be paid:
  - (i) free and clear of any restriction or condition;
  - (ii) free and clear of and (except to the extent required by law) without any deduction or withholding on account of any Tax or Regulations; and
  - (iii) without any deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

- (b) If any deduction or withholding is made to a payment to us, whether from you or another person, you will pay to us, when the payment is due if the payment is from you and on demand if the payment is from another person, whatever additional amounts is needed so that the amount that we actually receive, after taking into account the deduction or withholding, is the amount that we would have been entitled to receive if no deduction or withholding had been made.
- (c) Upon our request, you must provide us with evidence that payment in full of the amount of the deduction or withholding has been made to any relevant Regulatory Authority.

#### **11.12 Amendments**

We may change these Terms or any other terms of any Trade Finance Document (including fees and charges) at any time without having to obtain your agreement, by giving 14 days' prior notice of the change to you (or such other minimum notice period as required by law). Unless stated elsewhere in any Trade Finance Document, changes will not be made to the timing of payment or any security interest provided by you to us, unless made by agreement between us and you.

#### **11.13 Anti-money laundering and sanctions**

- (a) We may delay, block or refuse to process any transaction without incurring any liability if we suspect that:
  - (i) the transaction may breach any Regulations or any other prohibitions that may be applicable to us;
  - (ii) the transaction involves any person that is itself subject to a relevant sanction or is connected, directly or indirectly, to any person that is subject to such sanctions imposed by the United Nations, the European Union, the United States, or any other country; or
  - (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful.
- (b) Unless you have disclosed that you are acting in a trustee capacity or on behalf of another party, and such disclosure has been accepted by us, you warrant that you are acting on your own behalf in entering into these Terms.

#### **11.14 Force Majeure**

Without limiting the application of clause 11.17(d), you acknowledge and agree that we are not responsible for a Force Majeure Event occurring and we may suspend any Trade Product or Service until a Force Majeure Event has ended.

#### **11.15 Illegality**

If, at any time and for any reason, it is or will become unlawful or contrary to any directive for us to make available, fund or continue to provide all or any part of any Trade Product or Service, or to exercise any of our rights or carry out any of our obligations under any Trade Finance Document, we will not be obliged to make available, fund or continue to provide the Trade Products or Services. In any such case we may by notice to you cancel all or part of any Trade Product or Service with immediate effect and you shall, on

such date as we may have specified, repay all or, if permitted, part of the Secured Moneys in respect of the Trade Products or Services (or cancelled part).

#### 11.16 Business Purposes

- (a) You acknowledge and agree that the Trade Products or Services provided under these Terms will be used for the purposes of your business and:
  - (i) the provisions of the Consumer Guarantees Act 1993 shall not apply; and
  - (ii) to the fullest extent permitted by law, sections 9, 12A, 13 and/or 14 of the Fair Trading Act 1986 do not apply to any Trade Products or Services provided under these Terms.

#### 11.17 Responsibility

- (a) All instructions and correspondence relating to any Trade Product or Service utilised by you will be sent at your risk.
- (b) We are not responsible for:
  - (i) any Goods, Documents or items in our possession;
  - (ii) any errors, omissions, failures or delays in the transmission or delivery of any message or for any delay in receipt of payment from any third party;
  - (iii) any misrepresentation or error as to quantity, quality, nature or value of goods or for the validity or accuracy of any Bill of Exchange or other Documents or for any variation in the instructions agreed to by a Negotiating bank;
  - (iv) us acting in accordance with applicable Regulations;
  - (v) us acting in accordance with agreements we have with other financial institutions regarding the business dealings with those institutions, notwithstanding that you may have given instructions to the contrary; and
  - (vi) things beyond our or our agent's control, including any Force Majeure Event, act, omission or default on the part of any Correspondent Bank, Collecting Bank or settlement bank.
- (c) We will have no responsibility to investigate the correctness of any instruction received by us or to investigate the authenticity of any signature appearing upon any such instruction or that any signatory possesses any title, office or position which in such instruction s/he claims or purports to possess.
- (d) You acknowledge that any Trade Product or Service we provide to you may be affected directly or indirectly by Regulations. The Trade Products or Services may be interrupted, prevented, delayed or otherwise adversely affected, either in whole or in part, by reason of a Regulation including, but not limited to, where we or any Correspondent Bank considers, or a Regulatory Authority asserts, that a Regulation may apply (each an "**Adverse Effect**"). It is entirely your risk if any Adverse Effect occurs and we have no obligation to contest any act of any Regulatory Authority.

### 11.18 Liability and indemnity

- (a) Our total aggregate liability in respect of all Costs, whether arising from breach of contract, tort (including negligence) or otherwise, under or in connection with these Terms or any Trade Finance Document in respect of a Trade Product or Service, shall in no event exceed the total fees and charges paid to us under these Terms or any Trade Finance Document in respect of the relevant Trade Product or Service.
- (b) Neither we nor any of our officers or employees shall be liable to you or any other person for any loss, damage or delay, however caused, under or in relation to any Trade Product or Service or any Goods, unless the loss, damage or delay is directly caused by our (or our officers or employees) wilful default or gross negligence.
- (c) Without limiting clause 11.18(b), we will not be liable for any:
  - (i) loss of profit, loss of revenue, loss of business opportunity, or damage to goodwill; or
  - (ii) indirect, consequential or special loss or damage.
- (d) Except as expressly provided in these Terms or any Trade Finance Document, all representations and warranties (statutory, express, implied or otherwise) by us except any which may not lawfully be excluded, are excluded.
- (e) You indemnify us against, and will pay on demand, any Costs of whatever kind which we may suffer or incur in connection with:
  - (i) us providing or not providing the Trade Product or Service to you;
  - (ii) us complying with any of your instructions or purported instructions in relation to any Trade Product or Service;
  - (iii) your use of the Trade Product or Service;
  - (iv) any inability on our part to collect or freely deal with funds which we receive in relation to an amount owing by, or advanced to, you;
  - (v) any inability on our part to act in connection with a Trade Product or Service because of any court order or other similar obligation (including it being unlawful in any jurisdiction for us to perform our obligations or enforce our rights);
  - (vi) the failure of you or your agents to comply with these Terms or any Trade Finance Documents;
  - (vii) any Force Majeure Event;
  - (viii) any transaction to which a Trade Product or Service relates in any way being tainted by fraud or alleged fraud (other than by us);
  - (ix) the services of any third party (including any Correspondent Bank or its agent) in connection with any Trade Product or Service provided to you;

- (x) the enforcement of, or the preservation of our rights under these Terms or any Trade Finance Documents;
- (xi) any investigation carried out by us where we reasonably suspect there is a failure by you to comply with these Terms or any Trade Finance Documents;
- (xii) any enquiry; investigation, subpoena (or similar order) by any Regulatory Authority or legal proceeding made against us with respect to the transactions underlying any Trade Products or Services provided to you,

except to the extent that any Costs under sub-paragraphs (i), (ii) or (iii) directly arise from our breach of these Terms or any Trade Finance Documents.

- (f) Each indemnity under these Terms is a continuing obligation, separate and independent from your other obligations and will survive the termination or completion of any Trade Product or Service.

#### **11.19 Verbal or Electronic Instructions**

If you or persons on your behalf send us any communication electronically (including by facsimile or email) or verbally (including in person, by telephone or audio visual means):

- (a) you acknowledge that there are risks in communicating in this manner and agrees that you are responsible for those risk;
- (b) you must comply with any security measures required by us;
- (c) we may accept or reject any verbal communication; and
- (d) if we receive an electronic or verbal communication which we reasonably believe to be genuine, complete and which complies with our security procedures (if any):
  - (i) we need not verify the authenticity or completeness of the communication, even if the communication instructs us to make a payment; and
  - (ii) any such communication will be treated as authorised by you and will be binding on you.

#### **11.20 Limited Recourse**

- (a) Notwithstanding anything contained or implied in these Terms or any Trade Finance Document (including an agreement by us to provide the Trade Product or Service to you on a "without recourse" basis), we have no liability to pay you or if already paid, you will refund on demand and on a full recourse basis, the amount paid by us plus interest, fees and charges and any Costs we suffer or incur, if:
  - (i) there is a fraud, illegality or unauthorised act committed by any person (other than us) in connection with the Trade Product or Service;
  - (ii) you breach any of your representations, warranties, undertakings or obligations to us in connection with the Trade Product or Service;

- (iii) there is any non payment to us by any person or we are required to reimburse any person for monies received by us, in connection with the Trade Product or Service because of:
  - (1) a commercial dispute (whether under contract, tort or otherwise) between you and any other person; or
  - (2) any injunction, stop payment order or other court order (whether or not subsequently discharged);
- (iv) it is unlawful in any jurisdiction for us to perform our obligations or enforce our rights in connection with any Trade Product or Service, including our right to a payment (including due to any restriction placed on the availability, credit or transfer of foreign exchange).
- (b) You will notify us in writing if you are aware that any circumstance described in clause 11.20(a) has occurred or is likely to occur and the details of that circumstance.

#### **11.21 Use and Disclosure of Customer Information**

- (a) You authorise us and any of our related parties to use and disclose any personal or other information about you or the Trade Products or Services, or any person connected in any way with the Trade Products or Services at any time held by us or any of our related companies:
  - (i) for the purpose of establishing and maintaining the relationships between you and us and any of our related companies;
  - (ii) for any other purpose reasonably required by us in connection with these Terms and each Trade Finance Document;
  - (iii) to any Correspondent Bank, Regulatory Authority or any other person for any purpose which we or any Correspondent Bank considers necessary or desirable in connection with any Regulation or the Trade Products or Services;
  - (iv) to our parent, Industrial and Commercial Bank of China Limited and any of our other related companies for the purpose of credit, risk and prudential assessment, or providing, managing or administering Trade Products or Services;
  - (v) to any of our proposed assignee or successor;
  - (vi) to any holder of a security interest of any of your property that is also secured to us;
  - (vii) to any insurer of any of your property that is also secured to us;
  - (viii) to any person performing services or having rights in connection with any of your property that is also secured to us;
  - (ix) to any person making a claim under an Import Credit or a Standby Instrument;
  - (x) to any surety of you;
  - (xi) as required or permitted by Regulations;
  - (xii) to any credit or rating agency; and

(xiii) to our auditors and professional advisors.

#### 11.22 Security

- (a) If we require you to give us any security or there is a deemed security interest in our favour, you must execute such documentation and/or take such action as we may require to grant, perfect, preserve or enforce that security.
- (b) You agree that you will, at your cost, at our request made at any time:
  - (i) execute (in the form specified by us) such additional or replacement security documents, variations to such agreements, priority agreements, transfers, assignments, irrevocable orders and other payment directions, surrenders, releases, assurances and other notices or documents; and
  - (ii) do (as specified by us) every act, matter and thing, that we require to more effectively secure our rights and interest in and to the Documents, the Goods or the proceeds under any Export Credit (as applicable), or to exercise any rights, or that we consider necessary or desirable for improving, perfecting or registering any security interest.
- (c) We may register these Terms and any Trade Finance Document and any notice in relation to these Terms and any Trade Finance Document, or any of the security interests created by or given in connection with these Terms and any Trade Finance Document, on any appropriate register, and you will obtain all requisite consents to allow us to do so and provide us with all such information as we require, and procure the signing of all documents required by us, to effect such registration.
- (d) You irrevocably waive any rights you may have at any time, including under section 148 of the PPSA, to receive a copy of any verification statement (as that term is defined for the purposes of the PPSA).
- (e) You must pay on demand all Costs of whatever nature we incur in or in connection with the compliance with any demand given under section 162 of the PPSA or any application for, or the obtaining of, a court order to maintain any registration relating to any of the security interests created by, or given in connection with, these Terms and the serving of any such court order on you, the Registrar of Personal Property Securities or any other person.
- (f) On the enforcement of those security interests created by, or given in connection with, these Terms or any Trade Finance Document to which the PPSA applies sections 114(1)(a), 133 and 134 of the PPSA shall not apply. You also waive any rights you may have under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement.
- (g) You must give us not less than 10 days prior written notice of any change to your name or address or if there are any changes to any of the data required to register a financing statement under the PPSA.

#### 11.23 Severability

- (a) Present or future Regulations affecting the exercise or enforcement of any rights, establishing moratoriums on the payment of debts or otherwise operating in your favour are, to the full extent permitted by law, excluded from applying to these Terms and each Trade Finance Document.



- (b) If, despite clause 11.23(a), a provision of these Terms or a Trade Finance Document is void or voidable or unenforceable by us but would not be void or voidable or unenforceable if it were read down, and is capable of being read down, it shall be read down accordingly.
- (c) If despite clause 11.23(b), a provision of these Terms or any Trade Finance Document is still void or voidable or unenforceable by us:
  - (i) if the provision would not be void or voidable or unenforceable if a word or words were omitted, that word or those words (as the case may be) are severed; and
  - (ii) in any other case, the whole provision is severed,and the remainder of these Terms or the Trade Finance Document has full force and effect.

#### **11.24 Waiver**

- (a) You may not claim or seek to establish any waiver by us of any breach or default by you under these Terms or any Trade Finance Document or that we have given up or waived any of our rights unless we have given you a certificate in writing signed by our authorised officer expressly waiving that breach or default, or expressly waiving the exercise or enforcement of the rights concerned.
- (b) You acknowledge and agree that in the absence of a certificate of the kind referred to in clause 11.24(a), no conduct (including any omission) of ours or any of our officers, employees or contractors:
  - (i) constitutes or may be treated as a waiver of any breach or default of yours or that of any other person under these Terms or any Trade Finance Document or of any of our rights; or
  - (ii) stops us relying on the breach or default, or from exercising or enforcing the rights concerned,even if we act to our detriment in reliance on the conduct concerned despite this provision.
- (c) Any waiver of a right will not constitute a waiver of any subsequent or continuing right.
- (d) No single or partial exercise of a right shall restrict the further exercise of that or any other right.
- (e) Any decision by us to seek your waiver of any non-compliance of any Documents or a non-Complying Presentation does not oblige us to seek a waiver at any other time in connection with any other non-compliance of any Documents or a non-Complying Presentation.

#### **11.25 Further Assurance**

- (a) At our request, you will promptly and at your cost complete, execute and otherwise perfect all agreements and do all acts and things that we consider necessary or desirable to protect our interests (including our right to any payment in connection with any Trade Products or Services) under these Terms and each Trade Finance Document.
- (b) You irrevocably appoint us and any of our authorised officers severally to be your attorney (with full power to appoint substitutes and to sub-delegate) to, on your behalf and in your name or otherwise, and at such time and in such manner as the attorney may think fit to do any thing which

you may be obliged to do or ought to do under these Terms or any Trade Finance Document and which you have failed to do (including filling in any blanks in any document) and generally carry into effect, complete, facilitate the exercise or purported exercise of all or any of our rights, powers and discretions pursuant to these Terms or any Trade Finance Document.

- (c) You ratify and confirm and agree to ratify and confirm whatever any such attorney (or substitute or sub-delegate) shall do or purport to do in the exercise or purported exercise of the powers of attorney in clause 11.25(b).

#### **11.26 No Assignment or other Dealings**

You must not transfer, grant security over, encumber, declare a trust over or otherwise deal with any of your rights arising under these Terms, any Trade Product or Service or any Trade Finance Document without our prior written consent.

#### **11.27 General**

- (a) You represent and warrant that all information given to us, including financial information provided by you, or someone on your behalf, in connection with any application for, or the supply of, any Trade Product or Service is true and complete and accurate in all material respects and that you do not know of any material facts or circumstances which have not been disclosed to us which could affect our decision to provide any Trade Product or Service to you.
- (b) You must deliver to us within a reasonable time frame (as specified by us) following our request, any information which we require in relation to the provision of a Trade Product or Service to you, or which may assist or improve in the provision of Trade Products or Services to you from time to time (including information relating to your business, financial condition and operations).
- (c) If you live outside New Zealand or if you are not entitled to be permanently resident in New Zealand, you must let us know, and you must appoint an agent in New Zealand acceptable to us, to accept notices on your behalf.

#### **11.28 Governing Law and Process Agent**

- (a) Unless specified otherwise, the Terms and each Trade Finance Document are governed by the laws of New Zealand and you submit to the non-exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining all disputes under or in connection with these Terms and each Trade Finance Document.
- (b) If you do not have a place of business in New Zealand, you shall appoint (and shall provide us with details of the appointment of) a person to be your authorised agent to accept service of any document required to be served on you in relation to proceedings under or in connection with the Terms or any Trade Finance Document which are commenced in the courts of New Zealand. You further undertake to notify us promptly of any change of address of a current agent or representative and of the name and address of any substitute agent or representative.

## 12. HOW TO CONTACT US

You can contact us:

- on +64 9 374 7288  
  
(customer services are open Monday to Friday 9am – 4.30pm)
- by post to:  
  
Level 11  
188 Quay Street  
Auckland
- via our website: [www.icbcnz.com](http://www.icbcnz.com)