

## STANDARD TERMS

### EXPORTER TRADE FINANCE FACILITIES

#### 1. DEFINITIONS AND INTERPRETATION

1.1 **Interpretation:** Unless the context requires otherwise, words in this Agreement which are capitalised are words with specific meanings as set out in clause 1.2 below or in the Facility Agreement (in relation to a Facility) and any reference in the Agreement to:

- (a) **"you"** means each person named in the Facility Agreement 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) one person being **"controlled"** by another means that the other person (whether directly or indirectly and whether by the ownership (legally or beneficially) of capital, the possession of voting power, contract or otherwise): (i) has the power to appoint and/or remove the majority of the members of the governing body of that person or a member or members of the governing body of that person who is or are in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of the governing body of that person, or (ii) otherwise controls, or has power to control, the management and policies of that person, and **"control"** shall be construed accordingly;
- (c) **"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);
- (d) **"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;
- (e) **"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;
- (f) a **"Complying Presentation"**, an **"Export Credit"**, the **"Issuing Bank"**, the **"Nominated Bank"** and the **"UCP"** shall have the meaning given to them in ICBCNZ's Trade Products or Services General Terms and Conditions;
- (g) a person includes any individual company, corporation, firm, club, partnership, limited partnership, joint venture, association of persons (corporate or not), organisation, trust, state or Regulatory Authority (in each case, whether or not having separate legal personality);
- (h) a clause, schedule or annexure is a reference a clause, schedule or annexure to this Agreement;
- (i) a plural includes the singular and vice versa, and a word indicating a gender includes each other gender;
- (j) any document includes that document as amended, supplemented or replaced from time to time;
- (k) 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;
- (l) a time of the day is to New Zealand time;

- (m) us giving you notice means public notice, press release, notices in our branches or on our website (www.icbcnz.com), mail to the address you have advised to us, or such other method as we see fit; and
- (n) our website means www.icbc.com.

## 1.2 Defined Terms:

**"Affiliate"** means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person.

**"Agreement"** means this agreement between you and us which comprises each Facility Agreement, these Standard Terms and ICBC's Trade Products or Services General Terms and Conditions.

**"Approved Currency"** means the Base Currency and, if applicable any Optional Currency, in each case as specified in the Facility Agreement, or as subsequently notified by us to you from time to time.

**"Approved Debtor"** means a person obliged to make payment under, or who is indebted under, a Receivable as notified by you and approved by us from time to time.

**"Approved Receivable"** means a Receivable that satisfies the eligibility criteria set out in Annexure 1.

**"AUD"** means the lawful currency of Australia.

**"Authorised Officer"** means: (i) in respect of you, any director, or any person from time to time that you nominate as your Authorised Officer by notice to us, accompanied by certified copies of signatures of all new persons so appointed (and in respect of which we have not received notice of revocation of the appointment), and (ii) in respect of us, any of our officers.

**"Base Currency Equivalent"** means: (i) in relation to an amount in the Base Currency, that amount, and (ii) in relation to any amount in an Optional Currency, the amount of the Base Currency which we could purchase with the amount of that Optional Currency at our spot rate of exchange for purchasing the Base Currency with that Optional Currency in the Relevant Interbank Market for the Base Currency in accordance with our standard procedures at the relevant time for currency conversion.

**"Bill"** means a bill of exchange denominated in the Approved Currency drawn on an Approved Debtor (or the Issuing Bank, as applicable) and which has been, or will on our purchase under a Facility be, duly endorsed and payable to us.

**"Business Day"** means any day other than a Saturday or Sunday on which registered banks are open for normal banking business in Auckland and (in relation to any date for payment or purchase of funds), also means a day on which banks are open for general business in the principal financial centre for the relevant currency of those funds.

**"Commercial Dispute"** is where any person raises a dispute (whether under contract, tort or otherwise) or asserts any defence or counterclaim of any kind) which has the effect of partially or fully denying payment of a Receivable.

**"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.

**"Cost of Funds"** means, in relation to an amount due and owing to us under this Agreement, the cost to us reasonably determined by us and expressed as an interest rate per annum of that amount being outstanding or remaining unpaid to us for the Relevant Period.

**"Cover Percentage"** means the percentage of the Outstanding Receivable specified in the Facility Agreement (or as subsequently notified by us to you from time to time) that we may deal with in the manner requested by you under this Agreement.

**"Customer Designated Account"** means: (i) the account specified in the Facility Agreement or (ii) such other account that you open and maintain with us or with another financial institution we accept in writing, that you designate for the payment of Receivables.

**"Default Event"** means the occurrence of any one of the following: (i) you do not pay any amount owing to us (whether under a Trade Finance Document or any other agreement between us) by the due date, (ii) you breach any of your representations and warranties or fail to comply with any of your obligations under any Trade Finance Document or any other agreement between us, (iii) you (or any other person who has given a security interest or guarantee in our favour to support your obligations under any Trade Finance Document) become Insolvent, (iv) there is (in our opinion) the occurrence of a Material Adverse Change, (v) we reasonably believe you or another person has acted fraudulently in connection with any Trade Finance Document or any other agreement between us, or (vi) it is or is likely to become unlawful in any jurisdiction for either you or us to perform the obligations under any Trade Finance Document.

**"Default Interest Rate"** means the rate of default interest specified as such in the Facility Agreement.

**"Delivered"** means: (i) Goods which have been delivered to the order of and accepted by the Approved Debtor, and (ii) the title and risk in those Goods has passed to the Approved Debtor in accordance with the Sales Contract.

**"Dilution"** means, after a Receivable has been dealt with by us in the manner requested by you under this Agreement, any reduction in the amount paid or payable (inclusive of any amounts for Indirect Tax) by an Approved Debtor in respect of a Receivable by reason of any volume discount or rebate, the return or recovery of Goods by you or the operation of any retention of title clause or any other similar event or circumstance.

**"Documents"** means all 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 a Receivable.

**"Due Date"** means, in relation to a Receivable dealt with, or to be dealt with, by us (as the case may be) in the manner requested by you under this Agreement: (i) the Invoice Due Date, or (ii) if applicable, the date at the end of a Grace Period.

**"EURO"** means the lawful single currency of the Participating Member States of the European Union.

**"Facility"** means a facility provided by us to you under this Agreement.

**"Facility Agreement"** means our Facility Agreement offering a Facility to you and includes any subsequent letter from us varying the terms of that Facility which has been accepted by you.

**"Goods"** means the goods or produce supplied (or to be supplied) by you to the Approved Debtor under the relevant Receivable, Sales Contract, or Invoice, as the context requires.

**"Grace Period"** means the number of days specified in the Facility Agreement beyond the Invoice Due Date at the end of which the Approved Debtor must pay the Outstanding Receivable.

**"HKD"** means the lawful currency of the Hong Kong Special Administrative Region of the People's Republic of China.

**"ICBCNZ Nominated Account"** means our account specified in the Facility Agreement.

**"Increased Costs"** means: (i) a reduction in the rate of return from a Facility or on our overall capital (including, without limitation, as a result of any reduction in the rate of return on capital as more capital is required to be allocated), (ii) an additional or increased cost, or (iii) a reduction of any amount due and payable under any Trade Finance Document, which is incurred or suffered by us or any of our Affiliates to the extent that it is attributable to us having entered into our commitment or funding or performing our obligations under any Trade Finance Document.

**"Indirect Tax"** means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

**"Insolvent"** means in relation to any person: (i) an order is made or a petition is presented or a resolution is passed for the administration, winding-up or dissolution of that person, (ii) a receiver, administrator, statutory manager, liquidator or other official or creditors' representative is appointed in respect of that person or any assets of that person, (iii) that person becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable law, (iv) that person ceases or threatens to cease to carry on all or a substantial part of its business, (v) the holder of any security interest takes possession of the whole or (in our opinion) any material part of the property or assets of that person, (vi) that person enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or a notice of intention to remove it from the relevant register (if applicable) is given, (vii) that person is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, (viii) that person or any associated person (as that term is defined in the Corporations (Investigation and Management) Act 1989) becomes subject to a recommendation made by the Financial Markets Authority to the Minister of the Crown who is responsible for administration of that Act, supporting the appointment of a statutory manager pursuant to that Act, (ix) that person has committed an act of bankruptcy or is adjudicated bankrupt, (x) that person suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or (in our opinion) any material part of the indebtedness of that person, (xi) a distress, attachment or other execution is levied or enforced upon, or commenced against, any assets of that person and is not discharged or stayed within 10 Business Days, except, in each case, where we are satisfied that the person is contesting the same in good faith by appropriate proceedings, or (xii) any analogous event occurs in any jurisdiction.

**"Interbank Rate"** means:

- (a) for: (i) AUD, the average bid rate on the page designated as BBSY on the Reuters Monitor Money Rates Services, (ii) EURO, the percentage rate per annum determined by the Banking Federation of the European Union displayed on the appropriate page of the Reuters screen, (iii) HKD, the average rate displayed on the Reuters page HIBOR, (iv) NZD, the average bid rate on the page designated as BKBM on the Reuters Screen, and (v) USD and any other currency, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person who takes over administration of such rate), for the relevant currency displayed on the pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) (each a **"Screen Rate"**). If the agreed page is replaced for a Screen Rate, the relevant service ceases to be available, or the basis on which the relevant Screen Rate is calculated or displayed is changed and we determine that it ceases to reflect our cost of funds to the same extent as at the date of this Agreement, then we may specify another page or service displaying the appropriate Screen Rate after consultation with you; or
- (b) if: (i) no Screen Rate is available for the relevant currency and no new page is specified under the relevant Screen Rate, or (ii) the basis on which the agreed Screen Rate page is calculated or displayed is changed and in our opinion it ceases to reflect our cost of funding to the same extent as at the date of this Agreement, the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to us at our request quoted by the Reference Banks to leading banks in the Relevant Interbank Market as of the Specified Time for the offering of deposits in the relevant currency and for a period comparable to the Relevant Period; and
- (c) if, in our opinion, the rate in paragraph (b) cannot be determined, the Cost of Funds.

**"Invoice"** means an invoice evidencing a Receivable in an Approved Currency issued by you to the Approved Debtor in connection with Goods or Services supplied by you to the Approved Debtor under a Sales Contract.

**"Invoice Due Date"** means the date specified in an Invoice or the Bill (as the case may be) as the date upon which the Approved Debtor must pay the Receivable in full referred to in that Invoice.

**"Material Adverse Change"** means, in our opinion, a material adverse change in relation to: (i) your business, operation, property or condition (financial or otherwise), (ii) your ability or willingness to perform and comply with your obligations under the Transaction Documents to which you are a party, (iii) our ability to recover any amount payable by any other party to us under the Transaction Documents or to enforce performance of any other party's obligations to us under the Transaction Documents, or (iv) the validity,

enforceability or priority of the whole or any part of any Transaction Document or any of our rights or remedies under a Transaction Document.

"**NZD**" means the lawful currency of New Zealand.

"**Outstanding Receivable**" means a Receivable dealt with, or to be dealt with, by us (as the case may be) in the manner requested by you under this Agreement that is unpaid.

"**Overdue Amount**" means each amount (including fees) payable by you to us under this Agreement which is not paid when due.

"**Participating Member States of the European Union**" means any member state of the European Communities that adopts or has adopted the EURO as its lawful currency in accordance with legislation of the European Union relating to European Monetary Union.

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

"**Receivable**" means an amount owing by an Approved Debtor to you in connection with Goods or Services supplied by you to the Approved Debtor under a Sales Contract and includes all your rights, powers and remedies, in respect of that amount and all related indemnified amounts, interest and damages (if any) under the Sales Contract and any Document and includes proceeds under any Export Credit issued in respect of the Receivable (where applicable).

"**Reference Banks**" means, in relation to an Interbank Rate, 3 leading banks selected by us who generally quote rates in the Relevant Interbank Market.

"**Relevant Interbank Market**" means in relation to AUD, the Australian bank bill market, EURO, the European interbank market, HKD, the Hong Kong interbank market, NZD, the New Zealand bank bill market, RMB, Chinese interbank market and in relation to USD and any other currency, the London interbank market.

"**Relevant Period**" means, in respect of a Receivable (or Export Credit, in the case of the Packing Loan Facility):

- (a) for the purposes of our calculation of the Interest in respect of the Finance Amount under the Receivables Financing Facility, the number of days from the Finance Date up to (but excluding) the Due Date of that Receivable;
- (b) for the purposes of our calculation of the Purchase Price of that Receivable under the Receivables Purchase Facility, the number of days from the Purchase Date up to (but excluding) the Due Date of that Receivable;
- (c) for the purpose of our calculation of the Purchase Price of a Bill relating to a Receivable under the Bill and Export Credit Facility, the number of days from the Purchase Date up to (but excluding) the Due Date of that Receivable;
- (d) for the purposes of our calculation of the Interest in respect of the Finance Amount under the Packing Loan Facility, the number of days from the Finance Date up to (but excluding) the Maturity Date; and
- (e) for all unpaid and outstanding amounts, the number of days from the due date an amount must be paid up to (but excluding) the date on which it is paid.

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

"**RMB**" means the lawful currency of the People's Republic of China.

"**Sales Contract**" means, in relation to a Receivable, the contract for the supply or provision of Goods or Services by you to the Approved Debtor as notified by you and agreed to by us from time to time.

"**Services**" means the services provided (or to be provided) by you to the Approved Debtor under the relevant Receivable, Sales Contract, or Invoice, as the context requires.

"**Specified Time**" means for (i) AUD, 10:30 a.m. (Australian Eastern Standard Time), NZD, 11:00 a.m. (Auckland Time), and for USD and any other currency, 11:00 a.m. London time, 2 Business Days before the first day of the Relevant Period, (ii) EURO, 11:00 a.m. 2 TARGET Days before the first day of the Relevant Period, and (iii) HKD, 11:00 a.m. Hong Kong Time, 2 Business Days before the first day of the Relevant Period, or in each case, such other time as may be advised by us to you from time to time.

"**Standard Terms**" means these Exporter Trade Finance Facilities Standard Terms.

"**TARGET2**" means Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in EURO.

"**Tax**" 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 Tax) imposed, levied, collected, withheld or assessed by any Regulatory Authority, on whomsoever imposed, levied, collected, withheld or assessed.

"**Trade Finance Documents**" means this Agreement (and each ancillary document issued thereunder or in connection with this Agreement from time to time) and each other document that you and we agree is a Trade Finance Document and includes each security interest provided to us from time to time in connection with this Agreement.

"**Transaction Documents**" means the Trade Finance Documents, Sales Contracts, Documents, each Export Credit dealt with by us in the manner requested by you under this Agreement and each other agreement or document that you and we agree is a Transaction Document.

"**Unapproved Receivable**" means a Receivable which is not an Approved Receivable.

"**USD**" means the lawful currency of the United States of America.

"**Without Recourse Exception**" means, in relation to an Outstanding Receivable, the occurrence of any one of the following: (i) you breached any of your representations, warranties, undertakings or obligations in relation to that Outstanding Receivable or its related Sales Contract, Invoice, Bill, Export Credit or Approved Debtor, (ii) there is a non-payment to us or we are required to reimburse any person for moneys received by us in respect of that Receivable because of a Commercial Dispute or because of any injunction, stop payment order or other court order (whether or not subsequently discharged), (iii) any restriction is placed or is impending on the availability, credit or transfer of foreign exchange, (iv) it is unlawful in any jurisdiction for us to perform our obligations or enforce our rights, or (v) there is a fraud, illegality or unauthorised act committed by any person (other than us) in connection with that Outstanding Receivable or its related Sales Contract, Invoice, Bill, Export Credit or Approved Debtor.

## **2. FACILITY AVAILABILITY**

- 2.1 We are not obliged to make a Facility available to you, unless: (i) we are satisfied (in form and substance) that all conditions precedent to the availability of the Facility have been met, (ii) we are satisfied that no Default Event or Without Recourse Exception has occurred and is continuing or in our opinion is likely to occur, (iii) we are satisfied that the representations and warranties made by you in this Agreement are true and correct at the date of the relevant request by you to use a Facility and the date upon which we comply with that request, (iv) the Base Currency Equivalent of the aggregate amounts outstanding under the Facility at any time will not exceed the Facility Limit (if any), (v) the Facility utilisation date is at least one Business Day prior to the Expiry Date (or termination date) for the Facility, and (vi) we have received all of the interest, fees and Costs incurred by us (and payable by you) in establishing and continuing the Facility.
- 2.2 If the Facility Agreement specifies that a Facility is uncommitted, you are not obliged to utilise a Facility and we are not obliged to accept any request from you to utilise a Facility (notwithstanding satisfaction of any condition precedent in respect of a Facility).
- 2.3 If a Facility Agreement specifies that a Facility is a revolving facility, then amounts repaid or prepaid to or received or recovered by us will be available for reuse in accordance with this Agreement up to the Expiry Date (if any) for that Facility. We may agree to extend the Expiry Date (if any) for a Facility by written

agreement entered into with you before the then current Expiry Date and each such extended expiry date shall be the "Expiry Date" for that Facility.

- 2.4 If a Facility is uncommitted and has not been terminated earlier, either you or we can give the other 30 days notice in writing terminating this Agreement.

### **3. REPRESENTATIONS AND WARRANTIES**

3.1 You represent and warrant to us now and throughout the term of this Agreement that:

- (a) (if you are a company or another body corporate) you are a legal entity validly existing under the laws of your incorporation or registration, capable of suing and being sued and have all the power to own your assets and to carry on your business as it is now being conducted;
- (b) you have the power, and all necessary action (including passing all resolutions) has been taken, to authorise you to enter into, execute and deliver, and exercise your rights and perform your obligations under, the Trade Finance Documents to which you are a party;
- (c) your obligations under the Trade Finance Documents to which you are a party are legal, valid, binding and enforceable against you subject to equitable principles and laws affecting creditors' rights generally;
- (d) there has been no Material Adverse Change;
- (e) you are not Insolvent;
- (f) there is no change in control of you from that subsisting at the date of this Agreement;
- (g) all information given to us, including financial information provided by you, or someone on your behalf, in connection with the Transaction Documents is true and complete and accurate in all material respects and 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 Facility to you;
- (h) each Receivable can be easily segregated and identified for ownership and related purposes (including enforcement) on any day;
- (i) you: (i) are not in breach of your obligations to any Approved Debtor or under any applicable law or regulation, (ii) are the sole legal and beneficial owner of all Receivables, and (iii) have an unqualified right to assign and transfer to us full ownership of each Receivable and such assignment or transfer is enforceable against the Approved Debtor and any other relevant third party;
- (j) you hold all documents which you should hold to enforce all Sales Contracts and Receivables;
- (k) you own or are licensed to use the software pursuant to which the Receivables are managed including, without limitation, the software in respect of account, invoice and Approved Debtor details and any software licence does not restrict us from exercising our rights under the Documents; and
- (l) no Default Event has occurred and is continuing.

### **4. TRUSTEES**

4.1 If you have entered into this Agreement as a trustee, this clause 4 will apply.

4.2 You represent and warrant to us now and throughout the term of this Agreement that:

- (a) the person or persons named in the Facility Agreement as trustees of the trust are the only trustees of the trust and have been validly appointed and have the power and authority to hold the trust assets and carry on the trust's business;
- (b) the trustees have the power under the trust deed and have been duly authorised to enter into the Trade Finance Documents to which they are party;
- (c) the trustees have the right to be fully indemnified out of the trust assets in priority to the beneficiaries in respect of all obligations under the Trade Finance Documents to which they are party

and we are entitled to be subrogated to that right in respect of the trustees' obligations under the Trade Finance Documents;

- (d) the trust assets are sufficient to satisfy all obligations in which you have a right of indemnity (including under the Trade Finance Documents) and the value of the trust assets are greater than the trust's liabilities (including contingent liabilities);
  - (e) no action has been taken or proposed to wind-up, terminate or liquidate the trust; and
  - (f) you are not in default under or in breach of the trust deed.
- 4.3 At our request, you must exercise your right of indemnity against the trust assets or any beneficiary for our benefit. This right is in addition to all other rights we have under the Trade Finance Documents.
- 4.4 If you do not have any interest or right in the assets of the trust (including as beneficiary), other than as a trustee, then your liability to us under the Trade Finance Documents will be limited to the trust assets unless we cannot recover any amount owing from the trust assets because any warranty set out above is not correct, or because of dishonest, wilful default or misconduct by you in respect of any Trade Finance Document. In this case, the limitation of liability above will not apply and you will be liable to us from your personal assets for the amount that we would have been able to recover from trust assets if the dishonesty, wilful default or misconduct did not apply.

## 5. LIMITED PARTNERSHIP

- 5.1 If you have entered into this Agreement as a limited partnership (**Limited Partnership**), this clause 5 will apply.
- 5.2 You represent and warrant to us now and throughout the term of this Agreement that:
- (a) you are properly constituted, duly registered as a limited partnership and as a New Zealand partnership as defined in section YA1 of the Income Tax Act 2007 and validly existing under the laws of New Zealand and your limited partnership agreement;
  - (b) the person or persons advised to us from time to time (including in any certificate provided to us) as your general partner(s) (**General Partner(s)**) and limited partner(s) is your sole or are your only general partner(s) and is your sole or are your only limited partner(s), respectively, and all partners have been validly appointed;
  - (c) the General Partner(s) is or are empowered by your limited partnership agreement to:
    - (i) enter into and comply with the Trade Finance Documents to which you are a party in its or their capacity as your general partner(s) and do so for the benefit of and for the purposes of the Limited Partnership and has or have taken all action and obtained all consents needed to enable it or them to do so; and
    - (ii) carry on your business as now conducted and to own your property;
  - (d) the Limited Partnership has not been terminated, de-registered, put into liquidation or voluntary administration, nor has any event that could lead to the termination, deregistration or liquidation of the Limited Partnership occurred;
  - (e) your limited partnership agreement complies with all applicable laws and all partners have complied with their obligations and duties under the limited partnership agreement;
  - (f) no powers conferred on the General Partner(s) by the limited partnership agreement have been delegated; and
  - (g) no partner is in default under or in breach of your limited partnership agreement.

## 6. PRESERVATION OF THE OUTSTANDING RECEIVABLES

- 6.1 You will not create, agree or attempt to create or allow to exist any security interest over any Outstanding Receivable other than any security interest created in our favour.

- 6.2 You will take action to protect or enforce the terms of any Outstanding Receivable (including taking all action to enforce any rights against the relevant Approved Debtor to the extent permitted by the terms of that Outstanding Receivable) and otherwise exercise any rights in respect of any Outstanding Receivable conferred at law or under the terms of the Outstanding Receivable.
- 6.3 If you hold any security interest to secure any Receivable, you will implement, maintain and comply in all material respects with procedures for perfection of those security interests.
- 6.4 Except as required by law, you will not:
- (a) release the Approved Debtor from any amount owing in respect of an Outstanding Receivable or otherwise vary or discharge the Outstanding Receivable;
  - (b) enter into any agreement or arrangement which has the effect of: (i) altering the amount payable in respect of an Outstanding Receivable, or (ii) extending the Due Date for any Outstanding Receivable; and
  - (c) do anything which would render an Outstanding Receivable subject to any set-off, counterclaim, deduction, withholding or similar defence or otherwise cause or contribute to a deterioration in the value of any Outstanding Receivable.
- 6.5 With respect to any insurance policy in respect of an Outstanding Receivable, you will:
- (a) make claims on our behalf to the extent you are able to make a claim under the insurance policy;
  - (b) not do anything which could reasonably be expected to materially adversely affect or limit our rights under or in respect of the insurance policy; and
  - (c) comply with all requirements and conditions of the insurance policy.
- 6.6 You will not sell, assign or otherwise dispose in any way of a Receivable to any other party other than us.

## **7. MANAGEMENT OF THE OUTSTANDING RECEIVABLES**

- 7.1 You will ensure that each Receivable is an Approved Receivable on the date it is dealt with by us in the manner requested by you under this Agreement and (unless we have given our prior written consent) continues to be an Approved Receivable while it remains outstanding.
- 7.2 You will effectively and efficiently manage and protect our interest in the Outstanding Receivables, subject to our reasonable instructions (if any).
- 7.3 You will not deal with any Outstanding Receivable as if the Outstanding Receivable is for your own account, or represent to others that you own any such Outstanding Receivable for your own account and must only deal with each such Outstanding Receivable in accordance with this Agreement.
- 7.4 Unless the Documents have been delivered to us, you will hold the Documents relating to the Outstanding Receivables as custodian for our sole benefit and in accordance with your ordinary business practices for safekeeping of similar documents.
- 7.5 You will upon request, report to us in a manner acceptable to us regarding the management and collection activities undertaken by you in respect of the Receivables.
- 7.6 You will ensure the Outstanding Receivables can be identified as such and be distinguished from any receivables that are not Outstanding Receivables and, at any time, all proceeds of and any adjustments to each Outstanding Receivable can be identified.
- 7.7 You will at your expense, perform fully and on time all your remaining obligations (if any) under the Sales Contract in respect of any Outstanding Receivable and otherwise take all reasonable steps that may be necessary or advisable to maintain the Outstanding Receivables in full force and effect.
- 7.8 You will observe collection and credit policies and procedures which are in accordance with methods and practices customarily adopted in your industry for the efficient and effective collection and recovery of receivables.

- 7.9 You will keep and maintain accurate Documents and ensure the Documents are identified as distinct and separate from your other accounts and records at all times.
- 7.10 You will have and maintain in good working order administrative and operating procedures (including an ability to recreate Documents in the event of their partial or complete destruction) and systems that are capable of providing the information to which we are entitled under this Agreement and enabling you to otherwise perform your obligations under this Agreement.
- 7.11 You will comply with and observe all laws and all applicable guidelines, directions, requests or requirements of a Regulatory Authority applicable to your business and each Outstanding Receivable and Document.

## **8. COLLECTION OF OUTSTANDING RECEIVABLES**

- 8.1 Until we choose to collect, recover and enforce payment of an Outstanding Receivable, you will: (i) effectively and efficiently collect and enforce payment of each Outstanding Receivable and take such action that we may instruct for collection and enforcement of the Outstanding Receivable, (ii) upon request, provide us with the evidence of your collection and enforcement action and the details of your collection procedures, and (iii) not appoint any other person to collect or enforce payment of an Outstanding Receivable without our prior written consent.
- 8.2 Upon our request, you will help us to collect Outstanding Receivables, whether or not we may institute any legal proceedings. At our absolute discretion, we may start, defend or compromise any legal proceedings in relation to the collection of Outstanding Receivables and this Agreement and you will be bound by our actions and decisions. The proceedings may be in our or your name. You will provide to us all evidence that we may at any time need, whether before, during or after any proceedings. You will ensure that any witnesses that we need will attend court hearings. We may also use any alternate dispute resolution procedures including mediation or arbitration.

## **9. ICBCNZ NOMINATED ACCOUNT AND CUSTOMER DESIGNATED ACCOUNT**

- 9.1 You will ensure that payments by the Approved Debtor in respect of each Outstanding Receivable are paid into either the ICBCNZ Nominated Account or the Customer Designated Account as specified in the Facility Agreement.
- 9.2 You acknowledge that the ICBCNZ Nominated Account belongs to us and is not your own account.
- 9.3 You will: (i) notify us when a payment in connection with an Outstanding Receivable is made to the ICBCNZ Nominated Account or the Customer Designated Account, and (ii) deliver to us the remittance advice you have received from the Approved Debtor.
- 9.4 If payment in respect of an Outstanding Receivable is received by you, you will pay the amount received without deduction into either the ICBCNZ Nominated Account or the Customer Designated Account as specified in the Facility Agreement on the first Business Day following receipt and, until you do so, you will hold that money in trust for us and failing that will hold that money as our fiduciary and/or agent and in each circumstance for our sole benefit.
- 9.5 You will hold all money paid into the Customer Designated Account in respect of an Outstanding Receivable in trust for us and failing that will hold that money as our fiduciary and/or agent and in each circumstance for our sole benefit.
- 9.6 You may not withdraw or transfer monies from the Customer Designated Account without our prior written consent. You will ensure that the Customer Designated Account is free from any security interest, set-off or netting arrangement (other than in our favour).
- 9.7 We may withdraw and dispose of monies from the Customer Designated Account in accordance with this Agreement. If the Customer Designated Account is maintained with another financial institution, then you will ensure that we have these rights.
- 9.8 All Costs you incur under this clause 8 will be for your account.

## **10. INFORMATION**

- 10.1 You will notify us promptly upon becoming aware of, and must promptly upon request by us provide all information available to you in relation to, any of the following: (i) any material information about the creditworthiness and financial position of an Approved Debtor, (ii) any representation or warranty made by you to us in this Agreement proves to have been incorrect, untrue, incomplete or misleading, (iii) any Dilution or Commercial Dispute (and the steps, if any, being taken to remedy it) or action involving a Receivable or any Document, (iv) if any Receivable dealt with by us in the manner requested by you under this Agreement is Unapproved Receivable.
- 10.2 Upon our written request, you will: (i) make any Document available for inspection, verification and copying by us or any person authorised by us, and (ii) make available your employees, officers and agents to answer questions and discuss the Documents with us or any person authorised by us, during office hours, subject to you being given reasonable notice of the requirement to inspect the Documents.

## **11. INTEREST AND FEES**

- 11.1 You must pay interest on those parts of a Facility for which an interest rate is specified in the Facility Agreement. Interest must be paid on such days as specified for the relevant Facility in the Facility Agreement.
- 11.2 You must pay us the fees and charges referred to in the Facility Agreement in the amounts and at the times set out in the Facility Agreement. All fees payable by you to us are non-refundable.
- 11.3 You will pay us default interest at the Default Interest Rate on each Overdue Amount. Default interest will be calculated at the Default Interest Rate on each Overdue Amount from the due date for payment of the Overdue Amount to the date upon which the Overdue Amount is paid, divided into successive periods, each of which (other than the first) shall start on the last day of the preceding period and the duration of each of which shall be selected by us.
- 11.4 Interest accrues daily on the principal amount outstanding under the relevant Facility, and if a fee is referable to a period fees accrue it is calculated, on the basis of actual number of days elapsed and a year of 360 or 365 days (depending on the relevant currency), as determined conclusively by us.

## **12. CURRENCIES**

- 12.1 Unless another Trade Finance Document provides otherwise, all payments to us under a Trade Finance Document must be made in the same currency as the drawing or obligation to which it relates.
- 12.2 If a drawing or obligation under the Facility is denominated in an Optional Currency and at any time we determine that the Base Currency Equivalent of the aggregate drawings and obligations under the Facility exceeds the Facility Limit of the relevant Facility (if any) for a period of 3 or more consecutive Business Days, you will, within 2 Business Days of a request from us repay or provide cash cover for, so much of the outstanding drawings and obligations as is necessary to ensure that, after doing so, the Base Currency Equivalent of the aggregate drawings and obligations under the Facility is less than or equal to the applicable Facility Limit. You may provide cash cover by placing an amount on deposit with us in a blocked account and providing us with security and set-off rights acceptable to us.
- 12.3 If we receive an amount for or in respect of an Outstanding Receivable from you or any other person in a currency other than the currency of the relevant Outstanding Receivable or the currency required for any payment made in connection with such Outstanding Receivable under this Agreement, you will be liable for any shortfall arising from the conversion of the amount received by us into the currency of the Outstanding Receivable or of such payment on the date of receipt.
- 12.4 The method to be applied for conversion of one currency to another will be our standard procedures for currency conversion.

## **13. PAYMENTS GENERALLY**

- 13.1 You must make, and must ensure the Approved Debtor makes, all payments under the Documents relating to the Outstanding Receivables: (i) in immediately available, freely transferable funds to such accounts with such banks and in such currency as we may notify to them, (ii) exclusive of any tax or similar charges, (iii)

without any set-off or counter-claim and free and clear of any withholding or deduction (including, but not limited to, in respect of tax) except as required by law.

- 13.2 If any deduction (including, but not limited to, in respect of tax other than any tax imposed on our overall net income) is made, you must increase, and must ensure the Approved Debtor increases the amount of payment due to an amount which, after making such deduction, leaves an amount equal to the payment which would have been due if no deduction had been required. You must provide, and must ensure the Approved Debtor provides, us with such evidence as we may require (including certified copies of all relevant receipts) that such deduction or payment has been made to the relevant authority. You indemnify us against any Costs incurred by us arising from your or the Approved Debtor's failure to make that withholding or deduction as required.
- 13.3 If you have an account with us, you irrevocably authorise us to debit the account with any amount payable by you under a Trade Finance Document. We are not obliged to make the debit and nothing in this clause relieves you of your obligation to pay interest and each fee to us when it is due under the Trade Finance Document.
- 13.4 When we receive a payment in relation to an Outstanding Receivable, we are entitled to apply the payment in satisfaction of any Outstanding Receivable as we may at our absolute discretion decide.
- 13.5 If any sum from you to us falls due for payment on a day which is not a Business Day, such payment shall (unless otherwise provided in this Agreement) be made on the next Business Day, unless the result of that extension would be to carry the payment over into the next calendar month, in which event such payment shall be made on the immediately preceding Business Day and interest (if any) shall be adjusted accordingly.

#### **14. COSTS AND INDEMNITY**

- 14.1 You must promptly on demand pay to us the amount of all Costs incurred by us in connection with: (i) the negotiation, preparation, execution, stamping and registration of any Trade Finance Document, any documents executed pursuant to any Facility, or any financing statement relating to any security interest that you (or a someone on your behalf) grant in our favour, (ii) responding to, evaluating, negotiating or complying with any request by you for any amendment, waiver, consent, release or discharge in connection with any Facility, (iii) the enforcement or preservation of any of our rights under any Transaction Document, (iv) carrying out any legal review of, or obtaining legal advice in respect of our rights under, any Trade Finance Document, or (v) an enquiry, notice or order by a Regulatory Authority involving you or any of your officers.
- 14.2 You must indemnify and reimburse us on demand for any Costs incurred by us as a result of: (i) you breaching any of your representations, warranties, undertakings or obligations under any Trade Finance Document, (ii) us acting or declining to act on your request in respect of a Receivable or Facility under this Agreement, and (iii) any failure by you to utilise the Facility on the date or in the currency specified in a request.

#### **15. INDIRECT TAX**

- 15.1 All payments to be made by you or the Approved Debtor under or in connection with any Trade Finance Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when you or the Approved Debtor make the payment you must pay, and ensure the Approved Debtor pay, us an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax. We will promptly provide to you or the Approved Debtor as the case may be a tax invoice complying with the relevant law relating to that Indirect Tax.

#### **16. INCREASED COST**

You will, within 3 Business Days of a demand by us, pay us the amount of any Increased Costs incurred by us or any of our Affiliates as a result of the introduction of or any change in (or in the interpretation or application of) or compliance with any law or regulation (including any law or regulation regarding capital adequacy, prudential limits, liquidity, reserve assets or Tax), made after the date of this Agreement and calculated by us from the day when we first incurred the Increased Cost.

## **17. DEFAULT EVENT AND TERMINATION**

- 17.1 Whether a Facility is committed or uncommitted, we shall have the right to terminate this Agreement immediately by notice to you at any time if any Default Event happens.
- 17.2 Upon or at any time after a Default Event (whether or not we exercise our right to terminate this Agreement) we may give written notice to you: (i) cancelling on that date any unused portion of a Facility Limit for a Facility, (ii) reducing the Facility Limit for a Facility to zero and permanently cancelling it (iii) designating all or any of the Approved Receivables as Unapproved Receivables; and/or (iv) enforce any of the security interest granted by you in our favour.
- 17.3 Upon termination of this Agreement for any reason, the respective rights and obligations of the parties under this Agreement arising from or in respect of: (i) any transaction which has commenced prior to the termination of this Agreement, or (ii) any Approved Receivable dealt with by us in the manner requested by you under this Agreement, shall continue to apply and will remain in full force and effect notwithstanding the termination.

## **18. NOTICES**

- 18.1 Any communication to be made in connection with the Trade Finance Documents must be made in writing and may be: (i) given personally, (ii) left at the address last notified, (iii) sent by prepaid post to the address last notified, (iv) sent by fax to the fax number last notified, (v) sent by another form of electronic transmission (if the recipient has agreed to receive the notice by that method of electronic transmission) to the address last notified, or (vi) in any other way permitted by applicable law.
- 18.2 Any communication or document made or delivered under or in connection with the Trade Finance Documents will be effective: (i) if given personally or left at an address, on the date that it is given or left, (ii) if sent by post, in the ordinary course of post but in any event no later than the fifth Business Day after the date of posting, (iii) if sent by fax, when the sending machine indicates it was sent in full without error, (iv) if sent by another agreed form of electronic transmission, at the time when it is delivered to the electronic transmission address and recovered or downloaded from that address by the recipient using a post office protocol, internet message access protocol or similar system, (v) if given by publishing it, at the time it is first published, and (vi) otherwise, when it is received, unless a later time is specified in it.
- 18.3 Any communication or document to be made or delivered to us must be signed by your Authorised Officer, and will be effective only if it is expressly marked for the attention of the department or our officer as we may notify you from time to time and: (i) if it is received after 5.00 pm or on a day that is not a Business Day, on the following Business Day, and (ii) otherwise, when actually made or delivered in accordance with clause 17.2.
- 18.4 A party may notify the other party of any change in its notice details with 2 Business Days' prior notice.

## **19. ASSIGNMENT**

- 19.1 You may not assign, encumber, declare a trust over or otherwise deal with your rights, or transfer any of your obligations, under any Trade Finance Document without our prior written consent.
- 19.2 We may assign, transfer, encumber or otherwise deal with our rights or obligations under any Trade Finance Document without your consent.

## **20. GENERAL**

- 20.1 If, at any time, any provision of a Trade Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 20.2 Each indemnity in a Trade Finance Document is a continuing obligation, separate and independent from your other obligations and will survive the repayment or termination of that Facility.
- 20.3 Each Trade Finance Document (unless required otherwise by a registry or similar office where such document is to be submitted) may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), all of which when taken together shall constitute one and the same instrument,

and each of the parties to a Trade Finance Document may execute a Trade Finance Document by signing any such counterpart.

- 20.4 If there is any inconsistency between the Facility Agreement and Standard Terms, the Facility Agreement prevails.

## **21. GOVERNING LAW, JURISDICTION AND PROCESS AGENT**

- 21.1 This Agreement is governed by and shall be construed in accordance with New Zealand law.
- 21.2 Any legal action or proceeding arising out of or in connection with this Agreement may be brought in the courts of New Zealand or any other jurisdiction where any of your property may be situated. By signing this Agreement, you: (i) accept for yourself and in respect of your property, generally and unconditionally, the non-exclusive jurisdiction of such courts, (ii) irrevocably waive any rights of immunity which you or your property may have at any time, (iii) irrevocably waive any objection you may have at any time to any action or proceeding in any such court on the grounds of venue or inconvenient forum, and (iv) consents to service of process in any matter permitted by law.
- 21.3 If you do not have a place of business in New Zealand, you appoint the person specified in the Facility Agreement (if any) 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 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.

## **ANNEXURE 1 – ELIGIBILITY CRITERIA**

A Receivable is an 'Approved Receivable' if it complies with the following criteria to the extent that they are applicable to the relevant Facility:

- (a) The Receivable arises under a Sales Contract.
- (b) The relevant Sales Contract: (i) is in writing, (ii) has been entered into in your usual and ordinary business, and (iii) contains the customary trade particulars as to description and quantity of the relevant Goods or Services.
- (c) The Invoice for that Receivable has been issued within the Invoice Issue Date, and does not exceed the Maximum Invoice Period, in each case, as specified in the Facility Agreement (as applicable).
- (d) There is no fraud, dishonesty, illegality or unauthorised act committed by any person in connection with the Receivable.
- (e) You have not received any notice that the Approved Debtor is Insolvent.
- (f) The Approved Debtor: (i) is not in default of any obligation it owes you, (ii) has not repudiated, rescinded or claimed damages in respect of the Sales Contract, and (iii) (unless we have given our prior written consent) is not and will not be your Affiliate.
- (g) The Receivable and relevant Documents are free from any security interest (other than in our favour).
- (h) The Receivable can be assigned without the consent of the Approved Debtor or any other person, or if consent is required, each such consent has been obtained.
- (i) (In relation to the Receivables Financing Facility or Receivables Purchase Facility), the Receivable relates to Goods that have actually been Delivered to, or Services that have actually been performed for, the Approved Debtor.
- (j) The Receivable is not due and payable or overdue as at the date you request us to deal with the Receivable under this Agreement.
- (k) The Receivable is denominated in an Approved Currency.
- (l) The Receivable is legal, valid, binding and enforceable under all applicable laws in accordance with its terms by you against the Approved Debtor, subject to equitable principles and laws affecting creditors' rights generally.
- (m) The Receivable has not been previously dealt with.
- (n) The Receivable is not subject to any counterclaim, set-off or equity, or to a Commercial Dispute or any Dilution.