

# HONG LEONG BANK BERHAD

## STANDARD TERMS AND CONDITIONS FOR BANKING FACILITIES

In consideration of Hong Leong Bank Berhad at any time in its sole and absolute discretion granting the Facilities (as defined below) to the Customer (as defined below) to such extent and in such manner as the Bank thinks fit, the Customer agrees to be bound by these Standard Terms and Conditions for Banking Facilities (these "**Standard Terms**"). These Standard Terms supplement and form part of the Facility Letter (as defined below) and/or any other agreement (whether in writing, verbal or by conduct) between the Bank and the Customer in relation to the Facilities.

<b>PART A: GENERAL PROVISIONS</b>
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### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 *Definitions:*

In these Standard Terms:

"**assets**" includes present and future properties, revenues and rights of every description;

"**Bank**" means Hong Leong Bank Berhad, which includes all its branches and offices wherever situated and its successors and assigns;

"**Banking Day**" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in Hong Kong;

"**Break Costs**" means the amount determined by the Bank (at its absolute discretion) to be its cost of liquidating deposits or re-employing funds taken or borrowed to make available an advance or maintain or fund a loan or any part thereof under any of the Facilities;

"**Cost of Funds**" means the rate as determined by the Bank (at its absolute discretion) from time to time to be the prevailing cost to the Bank for granting or funding any facility or advance from whatever source that the Bank may in its absolute discretion determine;

"**CRS**" means:

- (a) the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard;
- (b) any legislation, regulations and guidance of any jurisdiction giving effect to, or otherwise relating to the Common Reporting Standard pursuant to paragraph (a) above; and
- (c) any intergovernmental agreements, treaties, regulations, guidance, standards or any other arrangements between any government bodies in each relevant jurisdiction, entered into to facilitate, implement, comply with or supplement the Common Reporting Standard pursuant to paragraph (a) above;

"**Customer**" means the Borrower(s) specified in the Facility Letter and where two or more persons are specified as such in the Facility Letter, the "**Customer**" shall mean all such persons and any one or more of them;

"**Documents**" means any documents, drafts, bills of exchange, documents of title, transport documents, insurance policies and any other documents handled by or passed through the

Bank, including those under import or export transactions;

**"Event of Default"** means any event or circumstance specified as such in Clause 15.1 (*Events of Default*);

**"Exchange Rate"** means the rate for converting one currency into another currency which the Bank determines to be prevailing in the relevant foreign exchange market at the relevant time, such determination to be conclusive and binding on the Customer;

**"Facilities"** means any and all of the credit, loan, treasury and other banking facilities or services of whatever type and nature at any time and from time to time granted to the Customer by the Bank, including the banking facilities (or any part of them) specified in the Facility Letter, and each a **"Facility"**;

**"Facilities Documents"** means the Facility Letter, these Standard Terms, the Security Documents and any other written agreement between the Bank and the Customer in relation to the Facilities or any part thereof;

**"Facility Letter"** means the facility letter(s) (including all its schedules) at any time issued by the Bank in relation to the Facilities and/or services extended by the Bank to the Customer, and includes any supplemental or amended facility letter(s);

**"FATCA"** means sections 1471 to 1474 of the United States Internal Revenue code of 1986 as amended and any associated similar or analogous legislation, treaty, intergovernmental agreement, foreign financial institution agreement, regulation, instruction or other official guidance of any government or any political subdivision thereof, any legal, judicial, governmental, administrative, public or regulatory body or authority, any tax or revenue authority, industry bodies or associations of financial service providers, law enforcement body, court or central bank in any jurisdiction within or outside Hong Kong;

**"HIBOR"** means the Hong Kong Interbank Offered Rate determined by the Bank for the relevant period;

**"Hong Kong"** means the Hong Kong Special Administrative Region of the PRC;

**"LIBOR"** means the London Interbank Offered Rate determined by the Bank for the relevant period;

**"OECD"** means the Organisation for Economic Co-operation and Development;

**"Personal Information"** means any information relating to an individual or entity from which such individual or entity can be identified, which includes but is not limited to the name, address, contact information (such as telephone number and email address), residency(ies), tax residency(ies), tax identification number(s) associated with the tax residency(ies), nationality(ies), citizenship(s), date and place of birth, country of incorporation, entity account holder type and other information of such individual or entity whether or not contained in any self-certification or account opening form;

**"Pledged Goods"** means the goods and products to which any of the Documents relates which are now or may in the future be in the Bank's actual or constructive possession;

**"PRC"** means the People's Republic of China (which for the purpose of the Facilities Documents excludes Hong Kong, Macao and Taiwan);

**"Security Document"** means each of the documents listed as being a "Security Document" in the Facility Letter together with any other document entered into by any person creating or expressed to create any Security Interest over any of its assets in respect of any obligations and liabilities of the Customer to the Bank;

"**Security Interest**" means any mortgage, charge, assignment, pledge, lien, rights of set-off, arrangements for retention of title or hypothecation or trust arrangement for the purpose of, or which has the effect of, granting or conferring security; and

"**Security Provider**" means any person (in whatever capacity) who or which guarantees or provides security, indemnity or other credit support (however named) in respect of any obligations and liabilities of the Customer to the Bank.

1.2 **General interpretation:** Unless contrary indication appears, any reference in the Facility Letter and these Standard Terms to:

- (a) the "**Borrower**" or the "**Customer**" shall be construed so as to include the Borrower's or the Customer's personal representatives, successors and assigns;
- (b) a Clause is a reference to a clause of these Standard Terms;
- (c) a "person" includes any individual, company, partnership, trust or body unincorporate (whether or not having separate legal personality);
- (d) words importing the singular include the plural and vice versa and words denoting any gender includes all genders;
- (e) a time of a day is a reference to Hong Kong time and time is of essence of any of the Facilities Documents;
- (f) "**including**" or "**includes**" means including or includes without limitation; and
- (g) a "**Facilities Document**", the "**Facility Letter**", these "**Standard Terms**", a "**Security Document**" or any other agreement, document or instrument is a reference to that Facilities Document, the Facility Letter, these Standard Terms, that Security Document or such other agreement, document or instrument as amended, supplemented, novated and/or replaced from time to time.

1.3 **Multiple Customers:** Where there are more than one Customer under the Facilities Documents, each Customer is jointly and severally liable with the other Customer(s) for all sums payable or owing to the Bank under the Facilities (whether incurred by that Customer or not). Each Customer further agrees that the Bank is not required to make any reference to the other Customer(s) in relation to the utilisation of the Facilities by any Customer. The Bank may release, compound with or otherwise vary or agree to vary the liability of, or grant time or indulgence to, or make other arrangement with, any one or more of the Customer and/or the Security Provider(s) without prejudicing or affecting its rights and remedies against the other or others. No Customer shall be entitled to any rights or remedies, legal or equitable, or as surety as regards the liabilities of the other or others.

1.4 **All liabilities:** The obligations and liabilities of the Customer to the Bank include all its past, present and future, actual and contingent obligations and liabilities to the Bank.

1.5 **Headings:** The headings and sub-headings in these Standard Terms are for convenience only and are to be ignored in construing these Standard Terms.

## 2. **APPLICATION**

2.1 **Applicability:** These Standard Terms shall apply to the Facilities and services which the Bank, at its sole discretion, may agree to make available to the Customer to such extent and in such manner as the Bank thinks fit.

2.2 **Conflict:** These Standard Terms shall be subject to such other terms and conditions which may be specified by the Bank from time to time in the Facility Letter or in other agreements

or documents relating to the Facilities. In the event of any inconsistency between the provisions of the Facility Letter, such agreements or documents and these Standard Terms, the former shall prevail to the extent of the inconsistency.

- 2.3 ***Uncommitted Facilities:*** Unless a Facility is expressly stated as a committed facility in the Facility Letter, the Bank has no obligation or commitment to provide any Facility to the Customer notwithstanding any provisions in these Standard Terms or any other Facilities Documents. Facilities made available to the Customer are subject to review from time to time and the Bank may vary, amend, cancel and/or terminate the Facilities or any part thereof by giving notice to the Customer.
- 2.4 ***Utilisation:*** Utilisation of any Facility may not at any time exceed the relevant limits set out in the Facility Letter or as otherwise advised to the Customer and shall be subject to satisfaction of any conditions precedent and (if applicable) the provision of collateral and/or security acceptable to the Bank, as set out in the Facility Letter or as otherwise advised to the Customer.
- 2.5 ***Additional Utilisation Conditions:*** The utilisation of any Facility shall be subject to the following additional conditions that on the proposed date of utilisation:
- (a) no Event of Default has occurred and is continuing or would result from the proposed utilisation;
  - (b) all representations and warranties made by the Customer and/or any Security Provider in each Facilities Document remains true and correct in all respects; and
  - (c) there is no material adverse change in the business, assets or financial condition of the Customer and/or any Security Provider.

### **3. REPAYMENT**

- 3.1 ***Principal repayment:*** Each principal amount of a loan or advance under a Facility shall be repaid to the Bank on the last day of the tenor of the relevant loan or advance or, if earlier, on the relevant due date of that loan or advance prescribed by the Bank (whether in the Facility Letter or in any other document), unless the Bank demands early repayment from the Customer pursuant to Clause 3.2 (*Overriding right of demand*) and/or Clause 15.2 (*Acceleration*).
- 3.2 ***Overriding right of demand:*** The Bank has the overriding right to terminate any Facility at any time without giving any reason or prior written notice to the Customer. The Customer shall immediately on demand pay to the Bank all monies which are now or will in the future become due, owing or payable to the Bank by the Customer (whether actual, contingent and whether alone or jointly with any other person) under each of the Facilities and/or the Facilities Documents. Upon demand being made, all sums owing or payable under the relevant Facility and/or the relevant Facilities Document shall become immediately due and payable by the Customer to the Bank.
- 3.3 ***Exception:*** Clause 3.2 (*Overriding right of demand*) does not apply to any Facility which is expressly stated as a committed facility in the Facility Letter.

### **4. SECURITY**

- 4.1 ***Continuing security:*** The Bank holds all assets of the Customer including those assets held in the Bank's name or to the Bank's order or for the account of the Customer (whether for safe custody, collection, security or for any specific purpose or generally) as continuing security for the payment and discharge of all the Customer's obligations and liabilities to the Bank.
- 4.2 ***Dealing with assets:*** The Bank may (at any time, without notice to the Customer or any other

person and in such manner as the Bank thinks fit) sell, dispose of or otherwise deal with any of the assets subject to the security.

4.3 **Net proceeds:** The Bank may apply the net proceeds of any sale, disposition or dealing of any asset given by the Customer as security in or towards discharge of the Customer's obligations and liabilities to the Bank in whatever priority the Bank may determine.

4.4 **Further security:** The Customer shall, upon demand by the Bank:

(a) provide such further security in such form at such value as may be required in the opinion of the Bank sufficient to secure any of the Customer's obligations and liabilities (whether direct or contingent) to the Bank (including the deposit of cash to meet the liability of the Bank under any guarantees, performance bonds, letters of credit, standby letters of credit, indemnities and/or undertakings (however named) issued or countersigned by the Bank at the request or for the account of the Customer); and

(b) execute and deliver to the Bank any documents in form and substance satisfactory to the Bank over any of the Customer's assets as the Bank may specify in any such demand.

4.5 **Limitation on liability:** Save for the Bank's negligence or wilful default, the Bank shall not be liable for:

(a) the price obtained for selling, disposing or otherwise dealing with any asset subject to the security or any loss or damages or depreciation in value of any security in possession or granted in favour of the Bank;

(b) any default on the part of any person employed to sell, dispose of or otherwise deal with any asset subject to the security or for any purpose connected therewith; or

(c) any failure to collect, store or insure any asset of the Customer subject to the security.

## 5. **COSTS AND EXPENSES**

5.1 **Payment of fees:** The Customer shall pay to the Bank the fees, commissions and charges in connection with the Facilities and/or services provided by the Bank to the Customer at the rate and in the amount and manner stipulated by the Bank from time to time.

5.2 **Cost indemnity:** The Customer shall indemnify the Bank against all costs and expenses (including the legal fees on a full indemnity basis) incurred by the Bank in connection with the Facilities (or any of them), including all costs and expenses incurred by the Bank as a result of:

(a) the performance, perfection or enforcement of or the preservation of rights under the Facilities Documents or any security or guarantee provided in relation to the Facilities;

(b) the preparation, execution or amendment of any documents in connection with the Facilities or any security or guarantee in relation to the Facilities; and/or

(c) conducting any search or investigation against the Customer, any Security Provider or any other person relating to the Facilities or engaging lawyers, accountants, tax advisers, surveyors or other professionals in this regard.

5.3 **Protection:** The costs and expenses are payable by the Customer notwithstanding that the Customer's applications for the Facilities may not be accepted or the Facilities may be modified, cancelled or terminated at any time before completion of the relevant transaction.

- 5.4 **Recovery action:** Without prejudice to other provisions, the Bank may at its absolute discretion take such action as it deems fit to enforce the terms and conditions in the Facilities Documents or otherwise in connection with the Facilities including without limitation the employment of third party agencies to collect any sums owing to the Bank. The Customer shall indemnify the Bank in full for all costs and expenses including legal fees and the charges of any third party agencies incurred by the Bank in respect of any such enforcement action.

## 6. **PREPAYMENT**

- 6.1 **Prepayment indemnity:** In the event of any prepayment of the Facilities, the Customer shall on demand fully reimburse and indemnify the Bank for all costs (including Break Costs) incurred by the Bank as a result of the prepayment. Such costs shall be in addition to the prepayment fees and additional interest, if any, prescribed in the Facility Letter and shall include all costs, losses, liabilities and expenses incurred or suffered by the Bank in cancelling, terminating and unwinding any arrangements previously effected by the Bank to secure funding of the Facilities concerned.
- 6.2 **Prepayment conditions:** No prepayment of the Facilities (or any part of them) is allowed unless a prepayment request submitted by the Customer is accepted by the Bank. In respect of any Facility repayable by instalments, the prepayment may be made only on an instalment payment date, otherwise interest will be charged on the prepaid amount until the next instalment payment date after the prepayment. The Bank may, at its sole discretion, adjust the instalment amount and/or the number of instalments after prepayment.

## 7. **INSTALMENT PAYMENTS**

In respect of any Facility repayable by instalments, if there is any change of interest rate (including the change of the base rate with reference to which the interest rate is calculated), the Bank may from time to time adjust the instalment amount, the number of instalments and/or the final maturity date of such Facility in such manner as the Bank determines by giving prior notice to the Customer. Under all circumstances, the Customer shall on each instalment payment date pay all the accrued interest on such date to the Bank.

## 8. **INTEREST**

- 8.1 **Interest:** Interest will be charged on any sum(s) outstanding or owing by the Customer from time to time under each Facility and/or any transaction(s) contemplated under any of the Facilities. Unless otherwise specified, such interest shall accrue on daily basis and shall be calculated, payable and compounded on such basis and in such manner as the Bank may determine at its absolute discretion. Except as otherwise specified, interest will be calculated on the basis of the actual number of day elapsed and a 365-day year for the outstanding amount(s) in Hong Kong Dollars or a 360-day year for the outstanding amount(s) in United States Dollars or according to the market practice for calculation of the outstanding amount(s) in other currencies.
- 8.2 **Default interest:** The Bank may charge default interest at the rate(s) as specified in the Facility Letter or at such other rate(s) as may be notified in writing by the Bank to the Customer from time to time on any monies not paid by the Customer when due. The obligation of the Customer to pay default interest on overdue amounts shall continue until all sums owing by the Customer to the Bank have been paid in full.
- 8.3 **Cost of Funds:** If the interest rate in respect of any Facility is expressed to be a margin over a base rate (including, for example, HIBOR or LIBOR), the Bank shall be entitled, at its absolute discretion, at any time to substitute the Cost of Funds in place of the base rate in calculating the interest payable under such Facility.

## 9. PAYMENTS AND GROSS-UP

- 9.1 **Cleared funds:** All payments by the Customer to the Bank shall be made without any set-off, counterclaim, deduction, withholding or condition of any kind. If the Customer is compelled by law (including but not limited to FATCA) to make any withholding or deduction, the sum payable by the Customer shall be increased so that the amount actually received by the Bank is the amount it would have received if there had been no such withholding or deduction. The Customer shall upon request of the Bank provide an official receipt of the relevant taxation authority for the withholding or deduction.
- 9.2 **Currency:** Payment by the Customer to the Bank shall be in the currency of the relevant liability or, if the Bank so agrees in writing, in a different currency, in which case the conversion to that different currency shall be made at the Exchange Rate.
- 9.3 **Timing of payment:** Any obligation which is payable on a non-Banking Day shall, unless otherwise agreed between the Customer and the Bank, be payable on the next succeeding Banking Day in the same calendar month or on the immediately preceding Banking Day if there is no such succeeding Banking Day in that calendar month and interest shall accrue thereon accordingly.
- 9.4 **Judicial orders:** No payment to the Bank pursuant to any judgement, court order or otherwise shall discharge the obligation of the Customer in respect of which it was made unless and until payment in full has been received in the currency in which it is payable hereunder and to the extent that the amount of any such payment shall, on actual conversion into such currency at the Exchange Rate, fall short of the amount of the obligation expressed in that currency, the Customer shall be liable for the shortfall.
- 9.5 **Application of monies:** Any monies paid to the Bank in respect of the Customer's obligations and liabilities may be applied by the Bank in or towards satisfaction of the same (in such order and manner as the Bank may determine appropriate) or placed to the credit of a suspense account with a view to preserving the Bank's rights to prove for the whole of the Customer's outstanding obligations and liabilities.
- 9.6 **Clawback:** If any payment made to the Bank in respect of the Customer's obligations and liabilities is required to be repaid by virtue of any law relating to insolvency, bankruptcy or liquidation or for any other reason, the Bank shall be entitled to recover such sums from the Customer as if such monies had not been paid.
- 9.7 **Increased costs:** If as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) the compliance with any law or regulation made after the date of the Facility Letter or any request from or requirement of any central bank or other fiscal, monetary or other authority:
- (a) the Bank is unable to obtain the rate of return on its capital which it would have been able to obtain but for the Bank's providing, funding or maintaining the Facilities; or
  - (b) the Bank incurs an additional or increased cost as a result of the Bank's providing, funding or maintaining the Facilities,
- then the Customer will on demand pay to the Bank an amount sufficient to indemnify the Bank for such reduction in return or increased cost.
- 9.8 **Withholding of payments:** Any payments by the Bank to the Customer shall be subject to any withholding and deduction as required under any law, regulation, court order, regulatory authority or any other compliance requirements in any jurisdiction (including but not limited to FATCA). Pursuant to the foregoing, the Bank may, without notice or liability to the Customer, perform, or cause to be performed, withholding of any monies payable to the Customer, deposit any such monies into a suspense or other account and/or retain such

monies pending determination of the applicability of such withholding or deduction requirement. The Bank shall not be liable for any gross-up, loss or damage suffered by the Customer by reason of such withholding, retention or deposit.

## **10. OVERDRAFT FACILITY**

- 10.1 **Operation:** The Customer undertakes that each overdraft facility shall be operated on such terms and conditions as the Bank may from time to time require.
- 10.2 **Honouring of cheques:** The Bank shall be under no obligation to honour cheques drawn against the account through which such overdraft facilities are operated if the payment of such cheques may result in the amount of the credit line allowed by the Bank being exceeded. For the purposes of determining the daily balances of such account, the Bank will not be obliged to include and allow credit for the amount of any cheques deposited to the credit of the account until the Bank has received payment of such cheques in immediately available funds.
- 10.3 **Interest and commission:** Interest on the overdraft facilities shall be calculated on the daily overdraft balance and debited to the account monthly. The Bank shall also be entitled to charge a commission, which is accrued, due and payable on a monthly basis, at the rate customarily charged by the Bank in respect of such overdraft facilities which is expressed as a percentage of the maximum limit of the overdraft facility granted to the Customer.

## **11. TREASURY FACILITIES**

- 11.1 **Treasury products:** Any application for foreign exchange, options, futures, swaps or other structured or derivative products (each a "**Treasury Product**") will only be considered by the Bank subject to its receipt of the documentation that the Bank may require from time to time. Any contract for any Treasury Product shall be entered into by the Customer at the rate(s) and/or price(s) quoted by the Bank at its absolute discretion.
- 11.2 **Confirmation:** The terms included or referred to in the relevant confirmation of a Treasury Product issued by the Bank shall apply to the relevant transaction between the Customer and the Bank.
- 11.3 **Risk:** The Customer warrants and represents that it will enter into any transaction for any Treasury Product with the Bank solely in reliance upon its own judgement and at its own risk, and the Bank shall not be responsible for any loss incurred by the Customer, whether or not with any advice received from the Bank.
- 11.4 **Facility limit and risk exposure:** The contract amount for any Treasury Product shall be subject to the relevant facility limit(s) (if any) stipulated in the Facility Letter and the risk exposure limit(s) set (either advised or otherwise) by the Bank from time to time.
- 11.5 **Right to mark to market:** The Bank may from time to time mark the Customer's outstanding contracts of Treasury Products to market by reference to the prevailing market rate or quotation in order to calculate the Customer's gain or loss under such contracts. If the Bank determines that the Customer has incurred a loss under any such contracts by the then prevailing mark-to-market calculation, the Customer shall forthwith pay such sum or deliver such collaterals as required by the Bank to cover such loss.
- 11.6 **Close-out:** The Bank has the right to close out and/or terminate any or all outstanding contracts of Treasury Products of the Customer if:
- (a) the Customer fails to perform any terms of such contracts or defaults in payment of any sum owing to the Bank under such contracts;

- (b) any circumstances have arisen or continued which, in the Bank's opinion, might adversely affect the Customer's ability to perform any of its obligations, or the Bank's position, under the relevant contracts;
- (c) such other event(s) or circumstance(s) as specified in the Facility Letter or any other Facilities Document that may entitle the Bank to close out and/or terminate all or any contract of Treasury Products; or
- (d) there occurs an Event of Default.

Upon closing-out or termination of such contracts, the Customer shall pay to the Bank any loss incurred by the Bank under those contracts. Such loss shall be determined by the Bank (acting in good faith) with reference to the replacement market value of the contracts so closed-out or terminated and shall include any loss of bargain, cost of funding, loss or cost incurred by the Bank as a result of terminating, liquidating, obtaining or re-establishing any hedge related to the terminated contracts. Any determination by the Bank on the amount of such loss shall be binding and conclusive on the Customer.

11.7 **ISDA Master Agreement:** To the extent that the provisions of this Clause 11 conflict with the ISDA Master Agreement (if any) entered into between the Bank and the Customer, the terms of the ISDA Master Agreement together with the confirmations referred to therein shall prevail to the extent of the conflict.

11.8 **Hedging purpose:** The Customer warrants and represents that it will enter into the contracts of Treasury Products with the Bank for the Customer's hedging purpose only.

## 12. **MORTGAGED PROPERTY**

The following provisions shall apply if a real property is charged or mortgaged to the Bank as security:

- (a) the title of the property shall be approved by solicitors appointed by the Bank at the cost of the Customer;
- (b) a full valuation report from the Bank's appointed valuer is required before any of the Facilities is drawn and an updated report is required at any time the Bank may think fit, and all valuation fees are to be borne by the Customer; and
- (c) the property shall be insured by the Customer through an insurer acceptable to the Bank upon such terms as the Bank may require from time to time.

## 13. **REPRESENTATION AND WARRANTIES**

13.1 **Representations and warranties:** The Customer represents and warrants to the Bank that:

- (a) (where the Customer is not an individual) it is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) it has the power and authority to enter into the Facilities Documents to which it is a party and its obligations therein are legal, valid, binding and enforceable obligations;
- (c) it has taken all necessary actions to authorise the borrowing, giving of the security (if any) and the performance of the transactions contemplated by the Facilities Documents;
- (d) the entry into and performance by it of, and the transactions contemplated by, the Facilities Documents to which it is a party do not and will not conflict with:
  - (i) any law or regulation applicable to it;

- (ii) (where the Customer is not an individual) its constitutional documents; or
  - (iii) any agreement or instrument binding upon it or any of its assets;
- (e) the Customer's entering into, exercising of its rights and/or performing of or complying with its obligations under the Facilities Documents does not and will not result in the existence of, or oblige it to create, any Security Interest over its assets (except any Security Interest granted in favour of the Bank);
- (f) each consent, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by the applicable law in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of the Facilities Documents has been obtained and is in full force and effect and there has been no default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of the same;
- (g) no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency is taking place, pending or, to the knowledge of the Customer, threatened against the Customer which could have a material adverse effect on the business, assets or financial condition of the Customer or the ability of the Customer to perform any of its obligations under any of the Facilities Documents;
- (h) the financial statements of the Customer as and when delivered to the Bank (as required where the Customer is not an individual) will have been prepared in accordance with generally accepted accounting principles and practices in Hong Kong (or international accounting standards to the extent applicable to the relevant financial statements) which will be consistently applied and will present a true and fair view of the financial condition of the Customer as at such date and the results of the operations of the Customer for the financial period on such date and as at such date, the Customer will not have any significant liabilities (contingent or otherwise) which are not disclosed by, or reserved against in, such financial statements and the Customer did not have any material unrealised or anticipated losses which in its honest opinion have a material adverse effect on the financial condition of the Customer;
- (i) the Customer is not in breach of or in default under any agreement relating to borrowed money to which it is a party or by which it may be bound;
- (j) the Customer is not taking any steps nor are any legal proceedings pending or being threatened against the Customer:
- (i) with a view to a composition, assignment or arrangement with all or any of its creditors;
  - (ii) with a view to the passing of any resolution for (or petitioning for) its winding-up or bankruptcy (as the case may be); or
  - (iii) with a view to enforcing any Security Interest over any part of its assets;
- (k) all information (written or otherwise) furnished by the Customer to the Bank was true and accurate in all material respects as at the date it was provided and did not omit material facts, and if such information changes or becomes incorrect or misleading, the Customer shall promptly (and in any event within thirty (30) days) notify the Bank; and
- (l) the assets provided to the Bank as security (if any) for any Facilities are free from any Security Interest (except any Security Interest granted in favour of the Bank).

13.2 **Continuing:** The representations and warranties contained in Clause 13.1 (*Representations and warranties*) shall be deemed to be repeated and will remain to be true and accurate in all respects as though made on each date on which any obligation or liability is owed by the Customer to the Bank or on which any Facilities remain available.

## 14. **UNDERTAKINGS**

14.1 **General undertakings:** The Customer undertakes that it shall:

- (a) provide the Bank with such forms, documentation, self-certification and other information (including Personal Information, if applicable) of the Customer and the Security Provider(s) as the Bank may require from time to time, including but not limited to those relating to the tax status of the Customer and the Security Provider(s) under FATCA and CRS and those for the purposes of the Bank's compliance with FATCA or CRS. If the Customer due to whatever reason fails to provide any self-certification or provide a reasonable explanation therefor, the Bank is entitled to report to the relevant authorities accordingly;
- (b) provide the Bank with a certified true copy of its updated Business Registration Certificate within fourteen (14) days after its expiry;
- (c) not materially change or cease its line of business without the Bank's prior written consent;
- (d) not sell, transfer or otherwise dispose of any material part of its assets without the Bank's prior written consent, other than in the normal course of its business transacted at arm's length basis;
- (e) ensure that it shall maintain its business and financial conditions to the satisfaction of the Bank;
- (f) promptly (and in any event within thirty (30) days) inform the Bank of any adverse change of the business and/or financial conditions of the Customer and/or the Security Provider(s), any actual or potential breach of the Facilities Documents, or any change of its or any Security Provider's tax status under FATCA and CRS;
- (g) ensure that the obligations of each of the Customer and the Security Provider(s) owed to the Bank will at all times rank at least *pari passu* in all respects, with all its other future, unsecured, unconditional and unsubordinated obligations;
- (h) ensure that in respect of any asset acquired by the Customer through financing provided by the Bank, no Security Interest is created or exists over such asset in favour of any other person without the prior written consent of the Bank unless the financing by the Bank for that acquisition has been fully repaid;
- (i) not undertake or permit any change in its constitution, including any re-organisation, amalgamation, consolidation, reconstruction, take-over or otherwise without the Bank's prior written consent;
- (j) not amend or alter its constitutional document(s) relating to the Customer's borrowing powers without the Bank's prior written consent; and
- (k) not do or permit to be done anything which would prejudice or jeopardise the rights of the Bank in respect of any Facilities or any Security Interest held by the Bank with respect to such Facilities.

14.2 **Information undertaking:** The Customer shall procure each Security Provider to provide the Bank with (a) a certified copy of its annual financial statements (or audited financial

statements in the case where the Security Provider is a limited company) within 180 days or such other period as the Bank may determine after the end of each of its financial years; and (b) a certified copy of its interim half-year unaudited financial statements within 120 days or such other period as the Bank may determine after the end of each of its financial half-years; and (c) such other information of any Security Provider as the Bank may require from time to time.

- 14.3 **Continuing:** The undertakings contained in this Clause 14 (*Undertakings*) shall be applicable for so long as any obligation or liability is owed by the Customer to the Bank or any Facilities remain available.
- 14.4 **Exceptions:** Paragraphs (b), (c), (i) and (j) of Clause 14.1 (*General undertakings*) and paragraphs (a) and (b) of Clause 14.2 (*Information undertaking*) do not apply where the Customer or the Security Provider (as the case may be) is an individual.

## 15. **EVENTS OF DEFAULT**

- 15.1 **Events of Default:** Each of the following events or circumstances is an Event of Default:
- (a) the Customer or any Security Provider does not pay on the due date any sum payable pursuant to a Facilities Document;
  - (b) the Customer or any Security Provider fails to comply with any provision of any Facilities Document to which it is a party;
  - (c) any representation or statement made or deemed to be made by the Customer or any Security Provider is or proves to be incorrect or misleading in any material respect when made or deemed to be made;
  - (d) any debt of the Customer or any Security Provider is not paid when due or is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described);
  - (e) the Customer or any Security Provider is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its debts;
  - (f) any corporate action, legal proceedings or other procedure or step is taken in respect of the Customer or any Security Provider for: (i) the suspension of payments, a moratorium of any debt, winding-up, bankruptcy, dissolution, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Customer or such Security Provider; or (ii) a composition, assignment or arrangement with any creditor of the Customer or any Security Provider; or (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of the Customer or any Security Provider or any of its assets; or (iv) the enforcement of any Security Interest over any asset of the Customer or any Security Provider, or any analogous procedure or step is taken in any jurisdiction;
  - (g) there occurs a material adverse change, in the opinion of the Bank, in the financial conditions of the Customer and/or any Security Provider, or any situation (such as changes in the management or shareholding structure) which may materially or adversely affect the ability of the Customer and/or any Security Provider to perform any of its respective obligations under the Facilities Documents;

- (h) (where the Customer or the Security Provider is an individual) the Customer or such Security Provider dies, becomes of unsound mind or is committed to serve a custodian sentence;
- (i) any Facilities Document ceases to be in full force and effect, or is cancelled, terminated or becomes unenforceable;
- (j) it becomes unlawful in any applicable jurisdiction for the Bank, the Customer and/or any Security Provider to perform any of its obligations contemplated by any Facilities Document, or for the Bank to fund or maintain any part of the Facilities; and
- (k) the occurrence of any event, or there is anything done, suffered or omitted to be done by the Customer and/or any Security Provider which in the opinion of the Bank, may put into jeopardy the Facilities or any Security Interest created in favour of the Bank under any of the Facilities Documents.

15.2 **Acceleration:** On or at any time after the occurrence of an Event of Default, the Bank may:

- (a) declare that the Facilities shall be terminated or suspended, whereupon the Facilities shall be so terminated or suspended; and/or
- (b) declare that all sums owing or payable under the Facilities, all accrued interests and all other sums owing under the Facilities Documents have become immediately due and payable, whereupon the same shall become so due and payable without further demand; and/or
- (c) take any action, exercise any other right or pursue any other remedy conferred upon the Bank by any of the Facilities Documents or by any applicable law or regulation or otherwise as a consequence of such Event of Default.

15.3 **Without prejudice:** This Clause 15 is in addition and without prejudice to the Bank's overriding right to demand repayment pursuant to Clause 3.2 (*Overriding right of demand*) and any other rights of the Bank under these Standard Terms.

## 16. **SET-OFF AND CONSOLIDATION**

16.1 **Account set-off:** The Bank may, at any time and without notice, combine or consolidate all the Customer's accounts with the Bank, its subsidiary or holding company and apply any credit balance to which the Customer is entitled, either alone or jointly, in or towards satisfaction of any obligation (whether or not matured, actual, future, contingent, unliquidated or unascertained) owed by the Customer to the Bank, regardless of the currency, the place of payment or the branch through which the Bank is acting.

16.2 **Right of set-off:** The Bank may, at any time without notice or demand, set off any obligation owed by the Customer to the Bank against any obligation (whether or not matured) owed by the Bank to the Customer, regardless of the place of payment, the branch through which the Bank is acting or the currency of either obligation.

16.3 **Foreign currency:** The Bank is authorised to purchase, at the Exchange Rate, such other currencies as may be necessary to effect such application with the monies standing to the credit of such accounts referred to in Clause 16.1 (*Account set-off*). If the obligations referred to in Clause 16.2 (*Right of set-off*) are in different currencies, the Bank is also authorised to convert either obligation at the Exchange Rate for the purposes of exercising its set-off right.

16.4 **Unliquidated amount:** If any of the obligations referred to in Clauses 16.1 (*Account set-off*) and 16.2 (*Right of set-off*) is unliquidated or unascertained, the Bank may set off an amount estimated by it in good faith to be the amount of that obligation.

16.5 **Account debit:** The Bank is authorised to debit any account of the Customer maintained with the Bank for any amount payable or owing by the Customer to the Bank.

## 17. **LIEN AND POWER OF SALE**

The Bank shall have a lien on all assets of the Customer coming into the possession or control of the Bank for custody or any other reason and whether or not in the ordinary course of banking business, with power for the Bank to sell, deal with, realise or otherwise dispose of such assets to satisfy any obligations owed by the Customer to the Bank.

## 18. **INDEMNITY**

18.1 **On demand indemnity:** The Customer shall on demand indemnify the Bank and the Bank's delegates (on a full indemnity basis) against any losses, damages, liabilities, payments, costs, expenses, tax, fees, claims, proceedings or other consequences which may arise or result from providing any banking services or the Facilities to the Customer, including but not limited to those as a result of the Customer providing misleading, incorrect or false information to the Bank.

18.2 **Payment undertaking:** The Customer shall indemnify and forthwith reimburse the Bank for all liabilities, losses, payments, damages, demands, claims, expenses and costs (including legal fees), proceedings or actions incurred or suffered by the Bank arising out of or in connection with the Bank giving any guarantee, performance bond, documentary credit, standby letter of credit, indemnity and/or other payment undertaking (however named) issued at the request of the Customer. Without prejudice to the generality of the foregoing, the Customer shall immediately upon demand refund or reimburse the Bank for all sums paid by the Bank under the aforesaid guarantee, performance bond, documentary credit, standby letter of credit, indemnity and/or other payment undertaking.

18.3 **Currency indemnity:** If any amount is received or recovered in a currency other than the currency (the "**Account Currency**") of the amount which is outstanding under the Facilities Documents, it shall only constitute a discharge to the Customer to the extent of the amount in the Account Currency which the Bank is able to purchase with the amount so received or recovered in that other currency on the date of receipt or recovery at the Exchange Rate. If that amount is less than the amount in the Account Currency expressed to be due to the Bank, the Customer shall on demand indemnify the Bank against any loss or shortfall sustained by the Bank as a result.

18.4 **Proceedings:** The Customer shall, upon request by the Bank, forthwith appear and defend at its own cost and expense any action which may be brought against the Bank in connection with any banking services or the Facilities made available to the Customer.

## 19. **CONFIDENTIALITY**

19.1 **Consent to disclose:** The Customer hereby authorises the Bank to disclose and transfer from time to time all information in connection with the Customer, its accounts and business with the Bank (including credit balances and security given) provided to the Bank by the Customer or otherwise known to the Bank (including Personal Information, if applicable) to:

- (a) the Bank's holding company or any of its offices, branches, related companies or associates or any subsidiary or associated company of that holding company (each an "**Affiliate**") and any officers, directors, employees, professional advisers, partners and representatives of each such Affiliate;
- (b) any agent, contractor or third party service provider which provides services of any kind to the Bank or any of its Affiliates in connection with the operation of its business;

- (c) any credit reference agencies for the purposes of verifying the information provided by the Customer and ascertaining the Customer's financial situation, and in the event of default by the Customer, to any debt collection agencies;
- (d) any actual or proposed participant or sub-participant in, or assignee or novatee of, the Bank's rights in relation to the Facilities or the Customer's accounts or any loan, banking services or facilities in relation to the Customer, and any actual or proposed financier of such participation, sub-participation, assignment or novation; and
- (e) any financial institutions with which the Customer has or proposes to have dealings to enable credit checks to be conducted on the Customer.

19.2 **Disclosure to authority:** The Customer further authorises the Bank or any of its Affiliates to disclose any of the Customer's information:

- (a) if required, permitted or under an obligation to do so by any law, regulation, court order or any supervisory or regulatory authority in any jurisdiction (including FATCA or CRS);
- (b) to whom information is compelled to be disclosed in connection with, and for the purpose of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (c) under and for the purposes of any guideline or guidance given or issued by any legal, judicial, regulatory, governmental, tax, law enforcement or other authorities, stock exchange or self-regulatory or industry bodies or associations of financial services providers; and
- (d) pursuant to any contractual or other commitment of the Bank with local or foreign legal, judicial, regulatory, governmental, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers, all of which may be within or outside Hong Kong and may be existing currently and in the future.

19.3 **Disclosure to Security Provider:** The Customer consents and acknowledges that the Bank may provide the following information/documents to any actual or potential Security Provider:

- (a) any financial information concerning the Customer;
- (b) a copy of the contract evidencing the obligations to be guaranteed or secured or a summary thereof;
- (c) a copy of any formal demand for payment which may be sent to the Customer; and
- (d) from time to time at the request of the Security Provider, a copy of the latest statement of account or other information showing the Customer's financial status and/or the Facilities provided to the Customer.

19.4 **Disclosure to auditor or insurer:** The Customer consents to the disclosure of its information to its auditor or insurer, if so requested by the auditor or insurer.

19.5 **Data policy:** Where the Customer is an individual or is composed of individuals, any Personal Information relating to the Customer may be used and disclosed for such purposes and to such persons in accordance with the Bank's policies on the use and disclosure of Personal Information set out in statements, circulars or notices made available by the Bank to its customers and such data may be used in connection with matching procedures (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)).

- 19.6 **Survival:** This Clause 19 shall continue in force on termination or expiry of (a) these Standard Terms; and (b) any banking relationship between the Bank and the Customer, including but not limited to the closure of any of the Customer's accounts with the Bank or the termination of any Facilities or Facilities Documents.
- 19.7 **Consent from others:** The Customer confirms that it has the consent of each individual whose Personal Information the Customer gives the Bank to the Bank's receiving, holding and processing those Personal Information in line with the data policy notice.
- 19.8 **Outside Hong Kong:** The Customer agrees that the Bank may need to provide or disclose information to any other person whose main place of business is outside Hong Kong, and confirms that such information may be held, processed or used by any such person outside Hong Kong.

## 20. **BANK'S STATEMENTS**

Any statement, advice, confirmation or determination by the Bank relating to any amount owing by the Customer under the Facilities or particulars of a transaction under the Facilities Documents or any other matters relating to the Facilities Documents or the Facilities is, in the absence of manifest error, conclusive of the matters to which it relates.

## 21. **INSURANCE AND EVALUATION**

21.1 **Maintenance of insurance:** The Customer shall, at the request of the Bank, maintain insurance coverage against losses and damages on such terms and with such insurance company(ies) acceptable to the Bank with respect to assets in which the Bank has interest failing which the Bank may take out insurance at the cost of the Customer. The Bank's interest shall be duly noted on the relevant insurance documents. The Customer shall lodge the relevant insurance documents with the Bank at its request.

21.2 **Insurance proceeds:** Any amounts due under any insurance maintained by the Customer pursuant to the Facilities Documents or other agreement between the Bank and the Customer shall be:

- (a) paid to, in the case of loss or destruction, the Bank; and
- (b) in the case of damage, unless otherwise agreed by the Bank, applied in repairing or reinstating the insured asset,

pending such payment or application, the Customer will receive and hold any such sums on trust for the Bank.

21.3 **Collect insurance proceeds:** The Customer hereby authorises the Bank to collect any amounts due under such policy or policies of insurance.

21.4 **Default:** If the Customer fails to effect or maintain any insurance as required by the Bank or in producing any policy to the Bank or if any insurance effected by the Customer is, in the Bank's opinion, insufficient or inadequate, the Bank may effect such insurance in such sum and manner as it thinks fit and the relevant cost shall be borne by the Customer. The Bank is entitled to debit the Customer's account(s) for any monies expended by the Bank for such insurance.

## 22. **LIMITATION OF LIABILITY**

22.1 **Limitation of liability:** The Bank shall not be liable to the Customer for any action taken or not taken by it unless directly caused by the Bank's negligence or wilful misconduct.

22.2 **Instruction subject to applicable law:** Notwithstanding that the Customer may have given

instructions to the contrary, the Bank shall not be liable to the Customer for any loss or damage which may have caused by the Bank acting in accordance with applicable laws, regulations or rules or with the terms and conditions of the Bank's agreements with other financial institutions regarding the business dealings with those institutions.

- 22.3 **Risk of transaction:** Each transaction will be undertaken by the Customer solely in reliance on its own judgment and at its own risk. The Bank shall not be responsible in any manner for any loss resulting from the Customer acting on advice received from the Bank whether or not such advice was requested by the Customer.

## 23. CHANGE IN CONSTITUTION

All agreements, collaterals, obligations given or assumed by the Customer shall continue to be valid and binding notwithstanding any change in the constitution of the Customer (if it is not an individual) or the Bank, by re-organisation, amalgamation, consolidation, reconstruction, take-over or otherwise.

## 24. PARTNERSHIP

- 24.1 **Customer in partnership:** Where the Customer is a partnership or otherwise consists of two or more persons, references to the Customer, where the context admits, are references to the persons who constitute the Customer for the time being, and each of these persons shall be jointly and severally liable for the Customer's obligations and liabilities to the Bank.

- 24.2 **Change in partnership:** If the Customer is a partnership, the Facilities Documents and any document executed and signed by the Customer to the Bank shall continue to bind the partnership notwithstanding any change in the constitution, name or membership of the partnership by reason of death, bankruptcy, retirement, disability, or admission of new partners or the occurrence of any other event which may dissolve the partnership or otherwise affect its obligations to the Bank.

- 24.3 **Death or retirement of partner:** In the case of the death or retirement of a partner, the liability of the partner or his estate to the Bank shall cease only with regard to transactions made with the Bank subsequent to the receipt by the Bank of written notice of the retirement or death of the deceased partner.

## 25. CONTINUING AGREEMENT, WAIVERS AND REMEDIES

- 25.1 **Continuing agreement:** This is a continuing agreement and all the rights, powers and remedies under the Facilities Documents shall apply to all the Customer's obligations to the Bank and shall be binding on the Customer notwithstanding any event affecting the capacity of the Customer to be bound by the Facilities Documents including death, incapacity, bankruptcy, receivership, liquidation, reconstruction amalgamation or change in constitution.

- 25.2 **Exercise of rights:** The rights of the Bank hereunder:

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

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

## 26. AUTHORISATION AND DELEGATION

- 26.1 **Authorisation:** The Customer irrevocably authorises the Bank to be the true and lawful

representative of the Customer (acting in the Customer's name or otherwise), with full power of delegation and substitution, to carry out any of the Customer's obligations under the Facilities Documents or for protecting or exercising the Bank's rights under the Facilities Documents, including (without limitation) the following:

- (a) to sign or execute all documents and do all acts and things which may be required or which the Bank thinks fit for carrying out any obligations of the Customer under the Facilities Documents or otherwise or for realising any security given to the Bank or for giving to the Bank the full benefit of the Facilities Documents;
- (b) to make any claim or take any action which the Bank may consider necessary or desirable in connection with any transaction contemplated by, or related to, the Facilities or in connection with any asset subject to the security given in favour of the Bank, in each case on such terms as the Bank may in its discretion consider appropriate; and
- (c) to take any action and sign any document that the Bank is authorised to take or sign under any provisions of these Standard Terms.

The Customer hereby ratifies and confirms and agrees to ratify and confirm whatsoever the Bank shall lawfully do or cause to be done by virtue of the authorisation granted under this Clause.

26.2 **Delegation:** The Customer hereby authorises the Bank to appoint any other person (including correspondent, agent or third party contractor) in relation to the banking services and the Facilities and the Bank may delegate any of its powers in the Facilities Documents to such person.

26.3 **Irrevocable authorisation:** The authorisation granted under this Clause 26 and Clause 37 (*Back-to-Back Documentary Credit*) shall be irrevocable (despite the bankruptcy, liquidation or other incapacity of the Customer whatsoever) as long as the Customer's liabilities and obligations to the Bank under the Facilities are not discharged in full.

## 27. **ENFORCEMENT**

Without prejudice to other provisions, the Bank may at its absolute discretion take such action as it thinks fit to enforce the terms and conditions of the Facilities Documents including without limitation employing any third party agent to collect any sums owing to the Bank. The Customer is liable to indemnify the Bank for all costs and expenses (including the charges of any third party agent) which are incurred by the Bank in respect of any such enforcement action.

## 28. **ASSIGNMENT**

The Customer may not assign or transfer any of its rights or obligations under the Facilities Documents. The Bank may assign or transfer any of its rights under any of the Facilities Documents to any other person and disclose to its professional advisers and any actual or potential assignee any information in connection with the Facilities Documents.

## 29. **NOTICES**

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

29.2 **Deemed receipt:** All notices or other communications from the Bank to the Customer must be given in writing and unless otherwise stated, may be made by letter, facsimile or e-mail. Any

such notice will be deemed to be given as follows:

- (a) if by letter, when delivered personally or if sent by prepaid post, two (2) or seven (7) Banking Days following that on which it was so posted to an address in Hong Kong or overseas respectively;
- (b) if by fax, when confirmed by an activity report confirming the fax number to which such notice was successfully sent; and
- (c) if by e-mail, when such notice was successfully sent.

29.3 **Contact details:** The address, fax number or e-mail address of the Customer for all notices under or in connection with the Facilities Documents are those notified by the Customer to the Bank from time to time or last known to the Bank.

29.4 **Notices to the Bank:** Any notice or other communication given to the Bank must be given in writing and addressed to the manager of the lending department or other department of the Bank through which the relevant banking services or the Facilities are provided to the Customer and shall be deemed to have been given only on actual receipt by the Bank.

### 30. **VARIATION**

The Bank may, at its sole discretion and at any time, by notice to the Customer vary, amend, cancel or supplement any terms and conditions of any of the Facilities Documents and such variation, amendment, cancellation or supplement shall take effect on the date of the notice or, if later, the date specified in the notice. Notwithstanding Clause 29 (*Notices*), any such notice shall be deemed to be received by the Customer when it has been displayed at the Bank's website for five (5) consecutive Banking Days in Hong Kong. The Customer's utilisation of any of the Facilities and/or services provided by the Bank after the effective date shall be deemed to be an acceptance of such variation, amendment, cancellation or supplement.

### 31. **SEVERABILITY**

If any provision of any of the Facilities Documents is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the validity or enforceability in that jurisdiction of any other provision of that Facilities Document; or
- (b) the validity or enforceability in other jurisdictions of that or any other provision of that Facilities Document.

### 32. **GOVERNING LAW AND JURISDICTION**

32.1 **Governing law and jurisdiction:** These Standard Terms shall be governed by and construed in accordance with the laws of Hong Kong and the Customer and the Bank agree to submit to the non-exclusive jurisdiction of the Hong Kong courts. Notwithstanding the foregoing, the Bank shall have the right to bring legal proceedings against the Customer in any other court with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

32.2 **Process agent appointment:** If the Customer is not ordinarily resident in Hong Kong or is not a company incorporated under the laws of Hong Kong or is a non-Hong Kong company which is not registered under the Companies Ordinance (Cap. 622), without prejudice to any other mode of service, the Customer:

- (a) agrees to irrevocably appoint a company incorporated in Hong Kong (and notify the

Bank) as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with the Facilities Documents; and

- (b) agrees that if the appointment of any person mentioned in paragraph (a) above ceases to be effective, the Customer shall immediately appoint another company incorporated in Hong Kong to accept service of process on its behalf in Hong Kong and, failing such appointment within fifteen (15) days, the Bank is entitled to appoint any person as the Customer's process agent by notice to the Customer at the cost of the Customer.

### **33. SANCTIONS**

The Bank may refuse to process any transaction which may violate or breach any sanctions, anti-money laundering or counter-terrorist financing laws, regulations, rules, guidelines and procedures promulgated by the United Nations, the European Union, the United States of America, the United Kingdom, Hong Kong, the PRC and all other jurisdictions to which it is subject. The Bank will not under any circumstances be liable for any claims, losses, damages, costs or expenses suffered by any party in connection with the Bank's refusal to process any such transaction.

### **34. THIRD PARTIES' RIGHTS**

- (a) No person other than the Bank and the Customer will have any right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or enjoy the benefit of any of the provisions of these Standard Terms.
- (b) Notwithstanding any provision of these Standard Terms, the consent of any person who is not a party to these Standard Terms is not required to rescind or vary these Standard Terms at any time.

<b>Part B: TRADE FINANCE PROVISIONS</b>
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### **35. GOVERNING RULES AND CONFLICT**

In these Standard Terms:

- (a) the following terms and conditions shall be subject to such other terms and conditions which may be specified by the Bank in relation to any documentary credit and any particular Facilities and services;
- (b) each documentary credit shall be subject to the Uniform Customs and Practice for Documentary Credits (the "UCP") of the International Chamber of Commerce (the "ICC") as are in effect from time to time;
- (c) each standby letter of credit shall be subject to (i) the UCP; or (ii) the International Standby Practices (the "ISP") of the ICC (as stipulated in the relevant application form(s) or the text of the instrument) as are in effect from time to time;
- (d) each guarantee, bond or payment undertaking issued by the Bank shall be subject to (i) the ISP; (ii) the Uniform Rules for Demand Guarantees (the "URDG") of the ICC as are in effect from time to time; or (iii) the governing law (as stipulated in the relevant application form(s) or the text of the instrument);
- (e) collection (either documentary or clean) shall be subject to the Uniform Rules for Collections (the "URC") of the ICC as are in effect from time to time; and

- (f) in the event of any conflict or inconsistency between the Facilities Documents and the UCP, the ISP, the URC, the URDG or any ICC rules, the Facilities Documents shall prevail.

**36. DOCUMENTARY CREDIT / STANDBY LETTER OF CREDIT / GUARANTEE / BOND / INDEMNITY OR THE LIKE ISSUED AT THE REQUEST OR FOR THE ACCOUNT OF THE CUSTOMER (COLLECTIVELY, THE "UNDERTAKINGS")**

- 36.1 ***Documents acceptance and payment:*** The Bank is authorised to accept and pay for all Documents presented under each of the Undertakings issued by the Bank.
- 36.2 ***Nomination:*** The Bank may nominate any of its own offices or correspondent banks to be the advising, confirming, paying, negotiating, accepting or deferred payment undertaking bank of any of the Undertakings.
- 36.3 ***Duty to reimburse:*** The Customer shall pay and reimburse the Bank on demand any sum in connection with each of the Undertakings issued by the Bank (including sums for which the Bank may be contingently liable). Such sum includes, but is not limited to, interest, costs, expenses, commissions, reimbursement claims from any nominated bank or confirming bank and any payment, prepayment or purchase effected by the Bank in connection with any Undertaking, all irrespective of any alleged discrepancies in the presented documents and/or any fraud that may be alleged at any time or discovered subsequent to such payment, negotiation, prepayment or purchase by any nominated bank, confirming bank or the Bank. The Customer shall pay the Bank no later than the applicable due date an amount equal to the amount due under each of the Undertakings issued by the Bank.
- 36.4 ***Set-off:*** The Customer hereby irrevocably authorises the Bank to block or debit the Customer's account(s) with the Bank, without making prior demand or notice, any sums owing or payable by the Customer to the Bank in respect of the Undertakings or other obligations and liabilities.
- 36.5 ***Amend or cancel undertakings:*** Subject to the beneficiary's consent, the Bank may (at any time, without notice or consent from the Customer) amend and/or cancel the whole or the unused balance of any of the Undertakings issued by the Bank.
- 36.6 ***Bank's discretion overriding Customer's instructions:*** Notwithstanding the Customer's instruction to settle the relevant drawing under any of the Undertakings irrespective of all the discrepancies of the presented documents, it is the Bank's sole and absolute discretion to determine whether to accept or reject such presented documents.
- 36.7 ***Enforceability:*** The Customer agrees and acknowledges that it is the sole responsibility of the Customer to (a) ensure clarity, enforceability or effectiveness of any term or requirement stipulated in each Undertaking; (b) comply with all applicable laws and regulations regarding the underlying transaction to which each Undertaking relates; (c) obtain all necessary documents and approvals from any governmental or regulatory bodies; and (d) produce such documents or approvals to the Bank upon request. The Bank is not responsible for advising and has no duty whatsoever to advise the Customer on such issues. The Bank shall not be liable to the Customer for any direct, indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever which may arise out of such issues.
- 36.8 ***Amending terms:*** The Customer agrees that the Bank may, at its sole discretion and without prior reference to the Customer, amend the terms and conditions submitted by the Customer and/or insert additional terms and conditions into the Undertakings as the Bank thinks appropriate and the Customer's obligation to reimburse the Bank under the Facilities Documents shall not be affected.
- 36.9 ***Customer copy:*** The Customer agrees and undertakes to examine the customer copy of each of the Undertakings issued by the Bank and irrevocably agrees that failure to give a notice of

objection about the contents of an Undertaking within five (5) days after the customer copy of such Undertaking or the subsequent amendment(s) is sent by the Bank shall be deemed to be the Customer's agreement to the contents of such Undertaking or such amendment(s) and to waive any rights to raise objections or pursue any remedies against the Bank in respect thereof.

### **37. BACK-TO-BACK DOCUMENTARY CREDIT**

- 37.1 **Identical terms:** A back-to-back documentary credit (the "**Back-to-Back DC**") must be issued against the support of a master documentary credit (the "**Master DC**") and all the terms and conditions of the Back-to-Back DC must be identical to those of the Master DC except as otherwise approved by the Bank.
- 37.2 **Authorisation:** The Bank is irrevocably authorised (but is not obliged) to (a) utilise the presented documents under the Back-to-Back DC for drawing of the Master DC; (b) negotiate the presented documents or prepay the deferred payment undertaking incurred by the Bank or purchase the draft accepted by the Bank or make any advance(s) against the documents presented (collectively, the "**Financing**") under the Master DC; and (c) directly apply the proceeds of the Financing of, or the payment proceeds received under, the Master DC to settle the corresponding drawing(s) under, and/or the Customer's obligations and liabilities owed to the Bank arising out of or in connection with, the Back-to-Back DC without first crediting such proceeds to the Customer's account with the Bank and if necessary, convert such proceeds at the Exchange Rate for effecting the aforesaid settlement, irrespective of discrepancies that may appear on the presented documents under the Back-to-Back DC (all of which, if any, are hereby waived).

### **38. EXPORT DOCUMENTS**

- 38.1 **Recourse:** Notwithstanding the provisions of the UCP or other ICC rules and unless the Bank agrees otherwise in writing, the Customer hereby expressly agrees and consents that the Bank will have full recourse against the Customer for any advances (including purchase, discounting, prepayment, negotiation or financing of any kind) provided by the Bank against any Documents or drawings under any export related transaction (including but not limited to any documentary credits and documentary collections (including D/A or D/P transactions)) (the "**Export Transaction**"). The Customer further acknowledges and agrees that it shall repay the Bank on demand for any advance obtained from the Bank plus any applicable interest, discount and charge, without raising any defence or objection. The Customer also undertakes to repay any advance plus any applicable interest, discount and charges, without further demand if the Bank, due to whatever reasons, does not receive full and punctual payment(s) under the Export Transaction.
- 38.2 **Currency indemnity:** If the amount (if any) actually received by the Bank under the Export Transaction is insufficient for discharge of the advance plus any applicable interest, discount and charges in full, the Customer shall immediately pay to the Bank any shortfall amount. Without prejudice to the generality of the foregoing, where the amount received under the Export Transaction is in the currency other than the currency of the advance, the Bank may convert the amount received into the currency of the advance at the Exchange Rate determined by the Bank at the time of conversion, and the Customer shall indemnify the Bank against any shortfall if the converted amount is less than the advance plus any applicable interest, discount and charges.
- 38.3 **Indemnity given by the Bank:** The Customer shall refund to the Bank on demand any monies received by the Customer under any indemnity signed by the Customer or any guarantee or indemnity countersigned or issued by the Bank covering discrepancies of the Documents if such Documents are subsequently not accepted or are unpaid due to whatever reasons.

### **39. PRE-SHIPMENT LOAN**

- 39.1 ***Duty to present compliant documents:*** In respect of any pre-shipment loan application, the Customer undertakes to present compliant Documents to the Bank for negotiation, prepayment, purchase and/or presentation to the Issuing Bank or the Nominated Bank (each as defined in the UCP) under the export documentary credit referred to in such application as soon as available and in any case not later than the latest presentation date prescribed in such export documentary credit.
- 39.2 ***Default:*** Subject to the Bank's sole and absolute discretion, if the Customer fails to deliver the Documents to the Bank as aforesaid, the Customer shall immediately pay to the Bank in full all advances made by the Bank pursuant to the relevant pre-shipment loan together with all interest accrued and all costs and expenses incurred.

### **40. PLEDGE OF GOODS**

- 40.1 ***Pledge of goods/Documents:*** In consideration of the Facilities and services extended by the Bank, the Bank shall have a pledge on the Documents and the Pledged Goods until all the obligations and liabilities owed by the Customer to the Bank have been fully discharged.
- 40.2 ***Continuing security:*** The pledge mentioned in Clause 40.1 (*Pledge of goods/Documents*) shall be a continuing security, in addition to any other security held by the Bank.
- 40.3 ***Dealing with goods:*** The Bank is authorised to sell, dispose of or otherwise deal with any of the Pledged Goods or the Documents.
- 40.4 ***Risks in goods:*** The risks in the Pledged Goods shall be with the Customer and the Bank shall not be responsible for any loss or damage or depreciation in value of any Pledged Goods or Documents held by the Bank as security.

### **41. RELEASE OF PLEDGED GOODS**

If any Pledged Goods or Documents are released to the Customer or to its order:

- (a) the Customer shall execute and deliver to the Bank trust receipts in form and substance satisfactory to the Bank together with any other documentation that the Bank may require;
- (b) the Document(s) and the Pledged Goods shall continue to be in pledge to the Bank as a continuing security;
- (c) the Document(s) are released to the Customer exclusively for the purpose of taking delivery of the Pledged Goods and/or selling the Pledged Goods for the Bank to buyer(s) at market value on normal trade terms;
- (d) the Customer shall hold the Document(s), the Pledged Goods and the relevant sale proceeds in trust for the Bank and solely to the Bank's order, and the Bank may at any time take possession of the Pledged Goods and/or the Document(s) at the Bank's sole discretion; and
- (e) the Bank is entitled to demand and receive the sale proceeds of the Pledged Goods from buyer(s) or any person(s) directly and give valid receipt for the same.

### **42. SHIPPING GUARANTEES / RELEASE OF GOODS**

- 42.1 ***Customer's undertaking:*** If the Bank, at the request of the Customer, releases any bill of lading to the Customer or endorses any transport document or countersigns or issues letters of guarantee or indemnity covering the release of any goods without production to shipping

companies, carriers or forwarding agents the relevant bills of lading, or other transport or title documents, the Customer undertakes that:

- (a) it shall use its best endeavours to obtain the relevant bills of lading, transport or title documents;
- (b) upon receipt of the bills of lading, transport or title documents, it shall promptly deliver them to the Bank and procure the release of the Bank from any shipping guarantee or indemnity given and the return of the relevant shipping guarantee or indemnity to the Bank for cancellation;
- (c) it shall waive all discrepancies that may appear in the import documents and accept all such Documents presented under the relevant documentary credit;
- (d) it shall, on demand by the Bank, deposit with the Bank such sum of money or security equal to the Bank's obligations and liabilities in respect of the shipping guarantees or indemnity given by the Bank (until they are released and returned to the Bank) and/or in respect of the Bank's obligations and liabilities under the relevant documentary credit; and
- (e) it shall reimburse the Bank for any amount paid by the Bank under the letter of indemnity, shipping guarantee or the relevant documentary credit.

42.2 ***Documents examination and payment:*** The Customer authorises the Bank to honour any relevant drawings without examining the presented Documents and to endorse or countersign in the Customer's name or otherwise all relevant bills of lading, title documents, transport documents, insurance documents or any negotiable instruments as the Bank thinks appropriate.

#### **43. UNDERTAKINGS**

The Customer undertakes that:

- (a) it is the sole beneficial owner of the Pledged Goods and the Documents;
- (b) it shall pay all costs of and incidental to the transportation, insurance and storage of the Pledged Goods;
- (c) it shall not encumber, transfer, sell, dispose of or otherwise deal with the Documents and/or the Pledged Goods except as directed by or with the prior written consent of the Bank;
- (d) it shall keep the Pledged Goods and/or the sale proceeds of the Pledged Goods separate from any other assets or accounts respectively of the Customer or other persons;
- (e) it shall not take any action which might prejudice the value of the Pledged Goods and/or the effectiveness of the pledge and the Facilities Documents;
- (f) it shall, at the request of the Bank, provide the Bank with such information concerning the Documents, the Pledged Goods and any sale proceeds holding in trust for the Bank and arrange the Bank or its delegates/agents to inspect or take possession of the Pledged Goods;
- (g) it shall not, without the Bank's prior written consent, accept or reject any amendments to any master documentary credit, back-to-back documentary credit or export documentary credit under which any pre-shipment loan, packing loan or pre-export facility is provided;

- (h) if the Bank advances any sum against any invoice relating to the Customer's import or purchase of goods or services, the Customer authorises the Bank to pay directly to the seller and any statement, advice or confirmation issued by the Bank relating to any amount paid to the seller shall be conclusive and binding on the Customer;
- (i) if the Bank advances any sum against any invoice and/or other documents (including, purchase, discounting, prepayment, negotiation or financing of any invoice and/or other documents) relating to the Customer's sale of goods or services, the Customer shall direct the relevant sale proceeds to be paid to the Bank directly or as the Bank may direct and the Bank has the right to demand and receive such sale proceeds from the buyer(s) or any person(s) and give valid receipt for the same. If the sale proceeds are received by the Customer, such sale proceeds shall be held by the Customer in trust for the Bank and the Customer undertakes to remit such sale proceeds to the Bank without delay;
- (j) it shall keep the Bank informed of the whereabouts of the Pledged Goods and of any change in the condition, market price, quality or quantity of the Pledged Goods;
- (k) it shall execute such documents and perform such acts as the Bank may consider expedient in connection with the exercise of its powers and rights hereunder;
- (l) it shall comply with all applicable laws and regulations, including those in relation to foreign exchange control or the import and export of goods, and shall arrange or cause to be arranged for the necessary import, export or other approvals on a timely basis, failing which, or if there are any flaws or defects in relation to the above approvals, the Customer shall indemnify the Bank against any costs and losses that the Bank may incur as a result;
- (m) it shall immediately notify the Bank if any circumstance which may affect the buyer's ability to complete the transaction of goods comes to the knowledge of the Customer; and
- (n) it shall not present any purchase orders, sales contracts, commercial invoices, transport documents, goods receipts or other relevant documents against which the Bank has provided export financing to other banks or financial institutions for further financing or any loans.

#### **44. AUTHORISATIONS**

Without prejudice to Clause 26 (*Authorisation and Delegation*), the Customer hereby expressly authorises the Bank:

- (a) to appoint any other person (including correspondent, agent or third party contractor) in relation to the Facilities or services extended by the Bank and the Bank may delegate any of its powers hereunder to such person;
- (b) to collect, transport, land, ship, store and/or insure the Pledged Goods and to inspect the Pledged Goods at any time;
- (c) to notify any other person of its interest in the Documents and the Pledged Goods;
- (d) to make payment forthwith when due or on demand under any Undertaking issued by the Bank and to debit the Customer's accounts for such payment without reference to the Customer or any other person; and
- (e) to apply any proceeds or monies received by the Bank for the Customer (whether under any documentary credits, documentary collections or other import and export related transactions) to discharge any sum owing or payable to the Bank by the

Customer in such order and manner as determined by the Bank at its absolute discretion.

**45. LIMITATION OF LIABILITY**

The Bank is not responsible for any goods, documents or items in its possession beyond the exercise of reasonable care and shall not be held liable for the default or negligence of any selected agent or correspondent or for any losses incurred in transit or the validity, genuineness or accuracy of any statement, certificate or document provided to the Bank under any Undertaking. The Bank shall not be responsible for any losses, damages, claims, demands, suits and proceedings as a result of any act, negligence or fault of any of its correspondents, contractors, agents, service providers or any other third parties.