

Commercial Credit Agreement

To: OCBC Bank (Hong Kong) Limited

In consideration of OCBC Bank (Hong Kong) Limited (the “**Bank**” which expression shall include its successors and assigns) 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 this agreement. This agreement supplements and forms part of the Facility Letter (as defined below) (if any). The Facility Letter and this agreement are collectively referred to as the “**Agreement**”.

Part A: General Provisions Applicable to the Facilities

1. Definitions and Interpretation

1.1 **Definitions:** In the Agreement:-

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

“**Cost of Funds**” means the rate as determined by the Bank 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;

“**Customer**” means the person specified as such in the execution section of this agreement and where there is more than one Customer, all reference to the “Customer” in this agreement shall mean all such persons or any one or more of them and their obligations hereunder shall be joint and several;

“**Deposit Rate**” means the deposit rate applicable to a deposit charged to the Bank for securing the Customer’s obligations and liabilities, such rate being determined by the Bank from time to time in its sole discretion;

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

“**Facility Letter**” means the facility letter(s) (including all its schedules) at any time issued by the Bank to the Customer in relation to the Facilities, and includes any supplemental facility letter(s);

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

1.2 **Interpretation:** In the Agreement, unless the context otherwise requires:-

- (a) words importing the singular include the plural and vice versa and words denoting any gender includes all genders;
- (b) a business day means a day (other than Saturday or Sunday) on which the banks are open for general business in Hong Kong and a time of a day is a reference to Hong Kong time and time is of the essence of the Agreement; and
- (c) “**including**” or “**includes**” means including or includes without limitation.

1.3 **Reference:** Unless a contrary indication appears, any reference in the Agreement to:-

- (a) a person includes an individual, a company, corporation, firm, partnership, joint venture, association, trust or body unincorporate and its successors and assigns;
- (b) a provision of law is a reference to that provision as amended, re-enacted and/or replaced from time to time; and
- (c) “**the Agreement**” or any other agreement or document is a reference to the Agreement or other agreement or document as amended, supplemented, novated and/or replaced from time to time.

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 of the Customer to the Bank.

1.5 **Headings:** Clause headings and sub-clause headings in this agreement are for convenience only and are to be ignored in construing this agreement.

1.6 **Multiple Customers:** Each Customer 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 Customers and/or guarantor and/or security provider without prejudicing or affecting its rights and remedies against the other or others. None of the Customers shall be entitled to any rights or remedies, legal or equitable, or as surety as regards the liabilities of the other or others of them.

2. Application

2.1 **Applicability:** This agreement shall apply to any banking facilities and services which the Bank, at its sole discretion, may agree to make available to such extent and in such manner as the Bank thinks fit.

2.2 **Conflict:** This agreement 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. In the event of any inconsistency between the provisions of the Facility Letter, such agreements or documents and this agreement, the former shall prevail to the extent of the inconsistency.

3. Repayment on Demand

The Customer shall 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 or contingent and whether alone or jointly with any other person). Upon demand being made, all sums owing or payable under the Facilities and/or the Agreement shall become immediately due and payable by the Customer to the Bank.

4. Payments and Gross-up

- 4.1 **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 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 or other authorities for the withholding or deduction.
- 4.2 **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.
- 4.3 **Timing of payment:** Any obligation which is payable on a day which is not a business day shall, unless otherwise agreed between the Customer and the Bank, be payable on the next succeeding business day in the same calendar month or on the immediately preceding business day if there is no such succeeding business day in that calendar month and interest shall accrue thereon accordingly.
- 4.4 **Judicial orders:** No payment to the Bank pursuant to any judgment, 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 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.
- 4.5 **Application of monies:** Any monies paid to the Bank in relation to the Customer's obligations or liabilities may be applied by the Bank in or towards satisfaction of the same (in such order and manner as the Bank may determine) 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 or liabilities.
- 4.6 **Claw-back:** If any payment paid to the Bank in respect of the Customer's obligations 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.

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 or the related transactions under the Facilities 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, 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 Agreement 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 against the Customer, guarantor, security provider or any other person relating to the Facilities.
- 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 Agreement or otherwise in connection with the Facilities including without limitation to 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 reasonable 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 reasonably 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 Facilities 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. Interest

- 7.1 **Interest Calculation:** The Bank shall charge interest on any sum(s) outstanding or owing by the Customer from time to time. Unless otherwise specified, interest shall accrue on a 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 days elapsed and a 365-day year for outstanding amount(s) in Hong Kong Dollars or a 360-day year for outstanding amount(s) in United States Dollars or according to the market practice for calculation of outstanding amount(s) in other currencies.
- 7.2 **Default interest:** The Bank may charge default interest (at such rate and on such basis as the Bank may determine) on any sum not paid by the Customer when due. The obligation of the Customer to pay default interest on overdue sums shall continue until all sums owing by the Customer to the Bank have been paid in full.

Unless otherwise stipulated, the applicable default interest rate for any sum not paid when due is the normal interest rate applicable to that sum as specified in the relevant Facility Letter plus at least 8% per annum (or in the

absence of such interest rate, at least 8% per annum over the Bank's Cost of Funds for the overdue sum).

- 7.3 **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), the Bank shall be entitled, in its discretion, at any time to substitute the Bank's Cost of Funds in place of the base rate in calculating the interest payable under such Facility. If the interest rate in respect of any Facility is expressed to be a percentage less than the base rate, the Bank shall be entitled, in its reasonable discretion, at any time to replace such interest rate by the Bank's Cost of Funds plus a margin determined by the Bank and notified to Customer as the applicable interest rate in respect of such Facility.

8. 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, whether or not the amount of such accrued interest exceeds the existing instalment amount.

9. Undertakings

- 9.1 **Undertakings:** The Customer undertakes that it shall:-

- (a) provide the Bank with (1) the certified copies of the annual audited financial statements of the Customer within 120 days or such other period as the Bank may determine following the end of each financial year and (2) such other information of the Customer, the relevant guarantor(s) and security provider(s) as the Bank may require from time to time;
- (b) not materially change its line of business without the Bank's prior written consent;
- (c) 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;
- (d) ensure that it shall maintain its business and financial conditions to the satisfaction of the Bank;
- (e) promptly inform the Bank of any adverse change of the business and financial conditions of the Customer, the relevant guarantor(s) and security provider(s) and any actual or potential breach of the Agreement;
- (f) ensure that the obligations of the Customer, the relevant guarantor(s) and security provider(s) will at all times rank at least pari passu in all respects, with all other future, unsecured, unconditional and unsubordinated obligations;
- (g) ensure that in respect of any property acquired by the Customer through financing provided by the Bank, no security interest is created or exists over such property in favour of other persons without the prior written consent of the Bank unless the financing by the Bank for that acquisition has been fully repaid;
- (h) 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; and

- (i) not amend or alter its Articles of Association or other constitutional document relating to the Customer's borrowing powers without the Bank's prior written consent.

- 9.2 **Continuing:** The undertakings contained in Clause 9.1 (*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.

10. Security

- 10.1 **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 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.

- 10.2 **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.

- 10.3 **Top-up:** The Customer shall, upon demand by the Bank:-

- (a) provide such further security in such form and at such value as may be required in the opinion of the Bank sufficient to secure any of the obligations and liabilities of the Customer to the Bank; 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.

- 10.4 **Limitation on liability:** Save for gross negligence or wilful default, the Bank shall not be liable for:-

- (a) the price obtained for selling, disposing of or otherwise dealing with any assets 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; or
- (b) any default on the part of any person employed to sell, dispose of or otherwise deal with any security or for any purpose connected therewith; or
- (c) any failure to collect, store or insure the assets of the Customer subject to the security.

- 10.5 **Proceeds application:** The Bank may apply the net proceeds of any sale, disposition or dealing of any security in or towards discharge of the obligations and liabilities of the Customer to the Bank in such order and manner as the Bank may determine.

11. Set-off and Consolidation

- 11.1 **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, associated or holding company and apply any credit balance to which the Customer is entitled, either solely 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 office through which the Bank is acting.

- 11.2 **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 currency of either obligation.

11.3 **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 account in Clause 11.1 (*Account set-off*) above. If the obligations referred to in Clause 11.2 (*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 right of set-off.

11.4 **Unliquidated amount:** If any of the obligations referred to in Clauses 11.1 (*Account set-off*) above and 11.2 (*Right of set-off*) above is unliquidated or unascertained, the Bank may set off an amount estimated by it in good faith to be the amount of that obligation.

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

12. 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 or liabilities owed by the Customer to the Bank.

13. Indemnity

13.1 **General:** The Customer shall on demand indemnify the Bank and the Bank's delegates (on a full indemnity basis) against any liabilities, losses, payments, damages, demands, tax, claims, expenses and costs (including legal fees), proceedings or other consequences which may arise or result from providing any banking services or the Facilities to the Customer.

13.2 **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, standby letter of credit, indemnity and/or other payment undertaking (however named) issued at the request or for the account of the Customer. Without prejudice to the generality of the foregoing, the Customer shall refund or reimburse the Bank for all sums paid by the Bank under the aforesaid guarantee, performance bond, standby letter of credit, indemnity and/or other payment undertaking no later than the date of payment by the Bank.

13.3 **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 Agreement, 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 Account Currency amount expressed to be due to the Bank, the Customer shall on demand indemnify the Bank against any loss/shortfall sustained by the Bank as a result.

13.4 **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 providing any banking services or the

Facilities to the Customer.

13.5 **Increased Costs:** In respect of any Facilities, if the Bank in its sole opinion determines that, as a result of (a) the introduction of or any change (or in the interpretation, administration or application of) any law or regulation or (b) compliance with any law or regulation or any request or directive from or requirement of any governmental authority, central bank or other fiscal, monetary or other authority:-

- (a) there is or may be any reduction on the rate of return or margin on the Bank's capital which it would have been able to obtain but for the Bank's (or any Bank's relevant affiliate) making, funding or maintaining the Facilities or any part thereof; or
- (b) the Bank (or any Bank's relevant affiliate) incurs any cost, additional or increased cost as a result of the Bank's (or any Bank's relevant affiliate) making, funding or maintaining the Facilities or any part thereof,

then the Customer shall on demand pay to the Bank an amount (as determined by the Bank in its absolute discretion) sufficient to compensate for such reduction or increased cost.

14. Disclosure

14.1 **Consent to disclose information:** The Customer gives its consent to the Bank to disclose and transfer from time to time all information in connection with the Customer's 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 data, 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;
- (b) any agents, contractors or third party service providers which provide services of any kind to the Bank in connection with the operation of its business;
- (c) any credit reference agencies, and, in the event of the Customer's default, to any debt collection agencies;
- (d) any institutions with which the Customer has or proposes to have dealings to enable credit checks to be conducted on the Customer; and
- (e) any actual or proposed participants or sub-participants in, or assignees or novatees of the Bank's rights in relation to, the Customer's accounts or any banking services or the Facilities,

in Hong Kong or outside Hong Kong.

14.2 **Disclosure permitted by law:** The Customer further consents to the disclosure of any of its information by the Bank if required or permitted to do so by any law, regulation, court order or any regulatory authority in any jurisdiction.

14.3 **Disclosure to security provider:** The Customer consents and acknowledges that the Bank may provide the following information/documents to any actual or potential guarantor(s) or security provider(s) in respect of the Facilities:-

- (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 contracts of insurance, assignments or valuations concerning the secured properties or assets;
- (d) a copy of any formal demand for payment which may be sent to the Customer; and
- (e) from time to time on request of the guarantor(s) or security provider(s), a copy of the latest statement of account or other information showing the financial status of the Customer and/or facilities provided to the Customer.

14.4 Disclosure to insurer/valuer: The Customer consents to and acknowledges that the Bank may provide the following information/documents to insurer(s)/valuer(s):-

- (a) any information of the properties and assets of the Customer; and
- (b) a copy of the contract of insurance or other contract evidencing the obligations to be guaranteed or secured or a summary thereof.

15. 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 Agreement or any other matters relating to the Facilities shall, in the absence of manifest error, be conclusive of the matters to which it relates.

16. Insurance

16.1 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.

16.2 Insurance proceeds: Any amounts due under any insurance maintained by the Customer pursuant to the Agreement 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 property,

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

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

16.4 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. The Bank is entitled to debit the Customer's account(s) for any monies expended by the Bank for such insurance.

17. Limitation of Liability

17.1 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 gross negligence or wilful

misconduct.

17.2 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 been 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.

17.3 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.

18. Change in Constitution

All agreements, collaterals, obligations given or assumed by the Customer shall continue to be valid and binding notwithstanding any change in constitution of the Customer or the Bank, by re-organisation, amalgamation, consolidation, reconstruction, take-over or otherwise.

19. Change in Business

Without prejudice to Clause 9.1(b), the Customer shall notify the Bank in writing immediately upon cessation of its business or any change in its business name.

20. Partnership

20.1 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.

20.2 Change in partnership: If the Customer is a partnership, the Agreement 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.

20.3 Death or retirement of partner: In the case of the death or retirement of a partner, the liability of that 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 death or retirement of that partner.

21. Continuing Agreement, Waivers and Remedies

21.1 Continuing agreement: This is a continuing agreement and all the rights, powers and remedies under the Agreement shall apply to all the obligations and liabilities of the Customer to the Bank and shall be binding on the Customer and its respective successors and assigns notwithstanding any event affecting the capacity of the Customer to be bound by the Agreement including death, incapacity, bankruptcy, receivership, liquidation, reconstruction amalgamation or change in constitution.

21.2 Exercise of rights: The rights of the Bank under the Agreement:-

- (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 right by the Bank is not a waiver of that right.

22. Authorisation and Delegation

22.1 Authorisation: The Customer irrevocably authorises the Bank to be the Customer's true and lawful representative (in the Customer's name or otherwise), with full power of delegation and substitution, to execute and sign all documents and do all acts and things for carrying out any of the Customer's obligations under the Agreement or for exercising the Bank's rights under the Agreement. The Customer shall from time to time ratify and confirm whatsoever the Bank shall lawfully do or cause to be done by virtue of the authorisation granted under this Clause.

22.2 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 Agreement to such person.

23. Assignment

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

24. Notices

24.1 Risks in sending notices: All notices or other communications in connection with the Agreement 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.

24.2 Deemed receipt: All notices or other communications from the Bank to the Customer will be deemed to be received by the Customer:-

- (a) if delivered personally, at the time of delivery;
- (b) if sent by post, two or seven business days after posting to an address in Hong Kong or overseas respectively; and
- (c) if by facsimile or e-mail, when confirmed by an activity report confirming the facsimile number or e-mail address to which such notice was successfully sent.

24.3 Contact details: The address, facsimile number or e-mail address of the Customer for all notices under or in connection with the Agreement are:-

- (a) those set out in the execution section of this agreement; or
- (b) any other address, facsimile number or e-mail address notified by the Customer to the Bank not less than 5 business days' notice or the address, facsimile number or e-mail address last known to the Bank.

24.4 Notices to the Bank: Any notice or other communication to the Bank must be given in writing and shall be deemed to have been given only on actual receipt by the Bank.

25. 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 the Agreement 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. Without prejudice to Clause 24 (*Notices*) above, any such notice shall be deemed to be received by the Customer when it has been displayed in the Bank's banking hall or at the Bank's website for 5 consecutive business 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. Nothing contained in the Agreement and/or any related security or guarantee in relation to the Facilities shall be deemed to impose on the Bank any obligation either at law or in equity to make or continue to make the Facilities available to the Customer.

26. Severability

If any provision of the Agreement 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 the Agreement; or
- (b) the validity or enforceability in other jurisdictions of that or any other provision of the Agreement.

27. Governing Law and Jurisdiction

27.1 Governing law and jurisdiction: The Agreement shall be governed by and shall be construed in accordance with the laws of the Hong Kong Special Administrative Region ("**Hong Kong**") and the parties agree to submit to the non-exclusive jurisdiction of the Hong Kong courts.

27.2 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, Laws of Hong Kong), without prejudice to any other mode of service, the Customer:

- (a) irrevocably appoint a process agent (the details of which are specified in the execution section of this agreement) to accept service of process in relation to any proceedings before the Hong Kong courts in connection with the Agreement; and
- (b) agrees that if the appointment of any person mentioned in sub-clause (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, unless such appointment is effective within 15 days, the Bank is entitled to appoint any person as the Customer's process agent by notice to the Customer.

28. Third Parties Rights

Third parties rights: Unless expressly provided to the contrary of the Agreement, a person who is not a party to the Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Ordinance (Cap. 623, Laws of Hong Kong) and notwithstanding any terms of the Agreement, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of the Agreement.

29. Sanctions

Sanctions: The Bank would 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 and all other jurisdictions to which it is

subject. The Bank will not be liable for any claims, losses, damages, costs or expenses suffered by any party in connection with the Bank's refusal to process such transactions.

Part B : Trade Finance Provisions

30. Governing Rules and Conflict: In this agreement:

30.1 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 banking facilities and services;

30.2 **Documentary credit:** Each documentary credit shall be subject to the Uniform Customs and Practice for Documentary Credits (the "UCP") of the International Chamber of Commerce ("ICC") as are in effect from time to time.

30.3 **Standby letter of credit:** Each standby letter of credit shall be subject to the UCP or International Standby Practices ("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.

30.4 **Payment undertaking:** Each guarantee, bond or payment undertaking issued by the Bank shall be subject to ISP, Uniform Rules for Demand Guarantees ("URDG") of the ICC as are in effect from time to time or the governing law as stipulated in the relevant application form(s) or the text of the instrument.

30.5 **Collection:** Collection (either documentary or clean) shall be subject to the Uniform Rules for Collections ("URC") of the ICC as are in effect from time to time.

30.6 **Conflict:** In the event of any conflict or inconsistency between the Agreement and the UCP, ISP, URC, URDG or any ICC rules, the Agreement shall prevail.

31. 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 "Payment Undertakings")

31.1 **Documents acceptance and payment:** The Bank is authorised to accept and pay for all documents presented under each of the Payment Undertakings issued by the Bank.

31.2 **Nomination:** Notwithstanding any instruction(s) stipulated in the relevant application form(s), the Bank may nominate any of its correspondent banks to be the advising, confirming, paying, negotiating, accepting or deferred payment undertaking bank in respect of the Payment Undertakings.

31.3 **Duty to reimburse:** The Customer shall pay and reimburse the Bank on demand any sum in connection with each of the Payment Undertakings issued by the Bank. Such sum includes 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 Payment 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 will pay the Bank no later than the applicable due date an amount equal to the amount due under each of the

Payment Undertakings issued by the Bank.

31.4 **Set-off:** The Customer hereby irrevocably authorises the Bank to block or debit the Customer's account(s), without making prior demand or notice, all sums that may be paid by the Bank or by the Bank's correspondents/agents or any sums owing or payable by the Customer to the Bank in respect of the Payment Undertakings or other obligations.

31.5 **Amend or cancel undertakings:** 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 Payment Undertakings issued by the Bank.

31.6 **Bank's discretion:** Notwithstanding the Customer's instruction to settle the relevant drawing under any of the Payment Undertakings irrespective of any discrepancies of the presented documents, it is the Bank's sole and absolute discretion to determine whether to accept or reject such presented documents.

31.7 **No duty to advise:** The Customer agrees and acknowledges that it is the sole responsibility of the Customer to (a) ensure clarity, enforceability and effectiveness of any term or requirement stipulated in each Payment Undertaking; and (b) comply with all applicable laws and regulations regarding the underlying transaction to which each Payment 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.

31.8 **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 Payment Undertakings as the Bank thinks appropriate and the Customer's obligation to reimburse the Bank under the Agreement shall not be affected.

31.9 **Customer copy:** The Customer agrees and undertakes to examine the customer copy of each of the Payment Undertakings issued by the Bank and irrevocably agrees that failure to give a notice of objection about the contents of the Payment Undertakings issued by the Bank within 5 business days after receipt of the customer copy of the Payment Undertakings or the subsequent amendment(s) shall be deemed to have agreed to the contents of the Payment Undertakings or the amendment(s) and to waive any rights to raise objections or pursue any remedies against the Bank in respect thereof.

32. Back-to-Back Documentary Credit

32.1 **Identical terms:** A back-to-back documentary credit must be issued against the support of a master documentary credit and all the terms and conditions of the back-to-back documentary credit must be identical to those of the master documentary credit except as otherwise approved by the

Bank.

33.2 Authorisation: The Bank is irrevocably authorised (but is not obliged) to (a) utilise the presented documents under the back-to-back documentary credit for drawing of the master documentary credit; (b) negotiate the presented documents, prepay the deferred payment undertaking incurred by the Bank, purchase the draft accepted by the Bank under the master documentary credit or make any advance(s) against the documents presented ("**Financing**") under the master documentary credit; and (c) directly apply the Financing proceeds of, or the payment proceeds received under, the master documentary credit 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 corresponding back-to-back documentary credit 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 documentary credit (all of which, if any, are hereby waived).

33. Export Documents

33.1 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 it for any advances (including purchase, discounting, prepayment, negotiation or financing of any kind) provided by the Bank against any Documents (as defined below) 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)) (each, an "**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 and charge, without raising any defence or objection. The Customer also undertakes to repay any advance plus any applicable interest and charge, without further demand if the Bank, due to whatever reasons, does not receive full and punctual payment(s) under the relevant Export Transaction.

33.2 Currency indemnity: If the amount (if any) actually received by the Bank under the relevant Export Transaction is insufficient for discharge of the advance plus any applicable interest and charge 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 relevant 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 and charge.

33.3 Indemnity: The Customer will 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.

34. Pre-Export Advances

34.1 Duty to present compliant documents: In respect of any

application for pre-export advances, the Customer undertakes to present to the Bank compliant documents for negotiation, prepayment, purchase and/or presentation to the Issuing or Nominated Banks (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.

34.2 Default: Subject to the Bank's sole and absolute discretion, if the Customer fails to deliver the compliant 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-export advances together with all interest accrued and all costs and expenses incurred.

35. Pledge

35.1 Creation of Pledge: In consideration of the banking services or the Facilities extended by the Bank, the Bank shall have a pledge (a) on the goods; and (b) the bills of exchange, negotiable instruments, documents of title, transport documents, insurance policies, delivery orders, warehouse receipts, godown warrants and any other documents of whatsoever nature processed or handled through the Bank ("**Documents**"), until all the obligations and liabilities owed by the Customer to the Bank have been fully discharged.

35.2 Continuing security: The pledge shall be a continuing security, in addition to any other security held by the Bank.

35.3 Dealing with goods: The Bank is authorised to sell, dispose of or otherwise deal with any of the goods or Documents subject to the pledge.

35.4 Risks in goods: The risks in the goods shall be with the Customer and the Bank shall not be responsible for any loss or damage or depreciation in value of any goods or Documents held by the Bank as security.

36. Trust receipt

If any goods or Documents pledged to the Bank 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 goods will continue to be pledged 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 goods and/or selling the goods for the Bank to buyer(s) at market value on normal trade terms;
- (d) the Customer shall hold the Document(s), the 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 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 goods from buyer(s) or any person(s) directly and give valid receipt for the same.

37. Shipping Guarantees / Release of Bills of Lading

37.1 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 the relevant bills of lading,

other transport document or title documents to shipping company, carrier or forwarding agent, the Customer undertakes that:-

- (a) it will 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 will waive all discrepancies that may appear in the import documents and will accept all documents presented under the relevant documentary credit;
- (d) it will, 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 will reimburse the Bank for any amount paid by the Bank under the letter of indemnity, shipping guarantee or the relevant documentary credit.

37.2 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.

38. Trade Finance Undertakings

The Customer undertakes that:-

- (a) it is the sole beneficial owner of the goods and Documents subject to the pledge in favour of the Bank;
- (b) it will pay all costs of and incidental to the transportation, insurance and storage of the goods;
- (c) it will not encumber, transfer, sell, dispose of or otherwise deal with the Documents and/or the goods except as directed by or with the prior written consent of the Bank;
- (d) it will keep the goods and/or the sale proceeds of the goods separate from any other assets or accounts respectively of the Customer or other persons;
- (e) it will not take any action which might prejudice the value of the goods and/or the effectiveness of the pledge and the Agreement;
- (f) it will not present the documents against which the Bank has provided financing to other banks or financial institution for further financing;
- (g) it will, at the request of the Bank, provide the Bank with such information concerning the Documents, the goods to which the Documents relate, 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 goods;
- (h) it will 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-export advances are provided;

- (i) 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.
- (j) 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 sales 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, the proceeds shall be held by the Customer in trust for the Bank and the Customer undertakes to remit the proceeds to the Bank without delay;
- (k) it will keep the Bank informed of the whereabouts of the goods and of any change in the condition, market price, quality or quantity of the goods; and
- (l) it will execute such documents and perform such acts as the Bank may consider expedient in connection with the exercise of its powers and rights hereunder.

39. Authorisations

Without prejudice to Clause 22 (*Authorisation and Delegation*), the Customer hereby authorises the Bank:-

- (a) to collect, transport, land, ship, store and/or insure the goods and to inspect the goods at any time;
- (b) to notify any other person of its interest in the Documents and the goods;
- (c) to make payment forthwith when due or on demand under any Payment Undertakings issued by the Bank and to debit the Customer's accounts for such payment without reference to the Customer or any other person; and
- (d) 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 determined by the Bank at its absolute discretion.

40. Limitation of Liability

40.1 Honour payment in good faith: The Bank and/or its delegate/agent, acting in good faith and in accordance with its policy or practice, is/are entitled to honour claims made under any Payment Undertaking issued by the Bank at the request or for the account of the Customer notwithstanding that the Bank and/or its delegate/agent is/are not obliged or ought to reject such claims under such Payment Undertaking and/or the applicable edition of the UCP, ISP or other ICC rules on the ground that there are discrepancies.

40.2 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 presented to the Bank under any Payment Undertaking.