

## STANDARD TRADE TERMS AND CONDITIONS

### IMPORTANT NOTICE

Applicant is advised to read and understand these Terms before applying for any of Trade Products and if the Applicant does not understand any of the Terms, the Applicant may seek the Bank's clarification on such Terms. The common terms and conditions which applies for all Trade Products (both Trade Services and Trade Financing) are set out in Clause 1 to Clause 15. The specific terms and conditions relating to the Trade Services and Trade Financing are set out in Clause 16 (*Trade Services Specific Terms*) and Clause 17 (*Trade Financing Specific Terms*) respectively.

## 1.0 DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

<b>"Applicant"</b>	means the person applying or has applied for any of the Bank's Trade Products;
<b>"Application Form"</b>	means a form as determined by the Bank for the Applicant to apply for any Trade Products for its own or a third party's benefit or use;
<b>"Bank"</b>	means CIMB Bank Berhad [Registration No. 197201001799 (13491-P)]
<b>"Business Day"</b>	means a day (excluding Saturday, Sunday or public holiday) which the Bank is open for business in Kuala Lumpur;
<b>"Charges"</b>	means fees, taxes, charges, commission, cost and expenses and other amounts payable by the Applicant for the Trade Products;
<b>"Claim"</b>	means any demand, request for payment or for acceptance and payment, claim, presentation or drawing made in respect of a Trade Products by a beneficiary, a third party or the Applicant;
<b>"Documents"</b>	means any draft, bill of exchange, promissory notes, documents of title, invoice, transport documents, shipping documents, insurance policy/ <i>takaful</i> certificate, certifications, written declaration or any other similar instruments relating to Trade Transaction where the Bank has provided Trade Products to the Applicant;
<b>"Goods"</b>	means any merchandise and where the context permits, any service of a seller provided to a buyer under a contract of sale which is the subject of a Trade Transaction where the Bank has provided Trade Products to the Applicant;
<b>"Indebtedness"</b>	means all monies, whether present, future, actual or contingent outstanding or payable or agreed to be paid by the Applicant and/or third party to the Bank for the Trade Products;
<b>"Laws"</b>	means any laws, regulations, directives, guidelines, circulars, notes, directions, requests, requirements, orders, rules and/or rulings (in each case, whether or not having the force of law in or outside Malaysia) that are or may from time to time be issued by any governmental body, regulators or any other persons or body having authority or jurisdiction over the Bank and the Applicant;
<b>"Taxes"</b>	means any applicable indirect or consumption taxes or levies in whatever name or form which may be imposed by the Laws and/or the Government of Malaysia from time to time including but not limited to service tax;

**“Terms”** shall include the common terms and conditions applicable to all Trade Products and the specific terms and conditions applicable to the respective Trade Services and/or Trade Financing;

**“Trade Products”** shall include but not limited to the following services and financing products offered by the Bank from time to time, particulars of which are set out in these Terms;

Trade Services	Trade Financing
(a) Documentary Credit (“DC”)	(a) Bankers Acceptance (“BA”)
(b) Outward Bills for Collection (“OBC”)	(b) Trust Receipt (“TR”)
(c) Standby Letter of Credit (“SBLC”)	(c) Multi-Currency Trade Loan (“MCTL”)
(d) Shipping Guarantee (“SG”)	(d) Foreign Bill Purchased / Discounted (“FBP/D”)
(e) Bank Guarantee (“BG”)	(e) Domestic Bills Purchased / Discounted (“DBP/D”)
(f) Quick Guarantee (“QG”)	(f) Without Recourse Export Financing (“WREF”)
(g) Inward Documentary Credit (“IDC”)	(g) Export Credit Refinancing (“ECR”)
(h) Inward Bills for Collection (“IBC”)	

**“Trade Transactions”** means the underlying transaction or transactions in respect of the Trade Products;

## 1.2 Interpretations

In the interpretation of these Terms:

- words indicating the singular shall include the plural and vice versa and words indicating any gender shall include every gender;
- the subtitles, headings and the division of provisions into sections and clauses in these Terms are for ease of reference only and shall not be considered in the interpretation of the substantive provisions of these Terms;
- where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase shall have the corresponding meanings;
- any reference to a party in these Terms shall include a reference to the successors-in-title and permitted assigns; and
- if any payment falls on a day which is not a Business Day, then payment shall be made on the next succeeding Business Day or if the Business Day falls on the following calendar month, on the preceding Business Day. Accordingly, interest shall be accrued from the payment due date to the date of actual payment.

## 1.3 Acknowledgment by the Applicant

The Applicant acknowledges that the Bank or its representative or agent:

- where available, has provided or made available the product disclosure sheet of the Trade Products; and
- has adequately explained the key contract terms of such Trade Products which affect the Applicant’s obligations.

## **2.0 ADDITIONAL TERMS**

These Terms are in addition to any other terms imposed by the Bank under any applicable letters of offer and financing agreements between the Applicant and the Bank and in the event of any conflicting terms, the terms of the applicable letters of offer and/or financing documents shall prevail in respect of the Trade Products.

## **3.0 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

The Applicant represents, warrants and undertakes as follows:

- (a) it has the legal, corporate power and capacity to execute, deliver and perform these Terms;
- (b) the Application will not exceed the powers granted to the Applicant or violate the provisions of its constitution or any Laws to which the Applicant is subject;
- (c) it is not a bankrupt or wound up and no legal proceedings are pending against the Applicant;
- (d) none of the directors, partners, executive officers, agents and/or guarantors of the Applicant (including their respective close relatives) is a director, controlling shareholder, influential shareholder, executive officer and/or officer of the Bank. The term "close relatives" means those family members who may be expected to influence or be influenced by the individual, as well as dependents of the individual and it includes the individual's spouse and dependents of the spouse, child (including step children and adopted children) and spouse of the child, parent and brother or sister and their spouses;
- (e) it has duly obtained all required legal or regulatory permits, licenses, approvals, consents, authorisations, orders and/or exemptions and has complied with all Laws in connection with its trade businesses, activities and transactions including but not limited to imports, exports, transshipment, transit of goods, provision of technical assistance or brokering under the Malaysian Strategic Trade Act 2010;
- (f) that the Goods related to the Application are not prohibited by, restricted under or in contravention of any Laws;
- (g) to provide the Bank with such information and Documents concerning a Trade Transaction (including copies of sale contracts, purchase order and invoices) as the Bank may require;
- (h) not to present the Documents to any other bank, financial institution or similar type of financing entity or obtain any form of financing and/or borrowing in respect of the same Trade Transactions; and
- (i) that there are no sanctions, whether national or international, by any bodies or governments against the Applicant or that may affect the Trade Transactions.

## **4.0 CHARGES AND PAYMENTS**

### **4.1 Charges**

The Applicant shall pay to the Bank all the Charges under these Terms. The Bank may review the Charges from time to time and any such revision shall be notified to the Applicant at least twenty-one (21) calendar days prior to the effective date of the revision in Charges. The notice can be given in any of the way referred to in Clause 8.0 (*Notices*) or through the Bank's website.

## 4.2 Payments

- (a) The Applicant shall pay the Bank all amounts on the due date and any amounts not paid by the due date shall be subject to interest at such rate as may be determined by the Bank, calculated from the due date to the actual date of payment.
- (b) All payments by the Applicant shall be made to the Bank in full without any deduction or withholding (whether in respect of any set-off, counterclaim, duties, Taxes, Charges or otherwise) unless the deduction or withholding is required by Laws, in which event the Applicant shall forthwith pay to the Bank such additional amount so that the net amount received by the Bank will equal the full amount which would have been received by it had no such deduction or withholding been made.
- (c) All payments by the Applicant to the Bank shall be made in the currency of the provision of services and/or financing in respect of the Trade Products. The Bank has a right to convert any payment received from the Applicant in another currency into the currency in which such payment was payable and the Applicant shall indemnify the Bank for any cost, loss or liability arising out of or as a result of such conversion.
- (d) If any payment due from the Applicant, or any order, judgment or award given or made in relation to any payment due from the Applicant, has to be converted into another currency for the purpose of making or filing a claim or proof against the Applicant or any other person, or obtaining or enforcing an order, judgment or award, the Applicant shall indemnify the Bank against any cost, loss or liability arising out of or as a result of such conversion.

## 5.0 INDEMNITY AND LIABILITY

- 5.1 **Indemnity:** The Applicant agrees and undertake to indemnify the Bank against any or all claims, liabilities, demands, losses, damages, costs, Taxes and expenses (including legal expenses on a solicitor and own client expense) brought against, sustained, suffered or incurred by the Bank arising out of or as a result of the Application and any transactions processed thereunder or these Terms unless the same is caused directly by the Bank's fraud, gross negligence or wilful breach of its obligations under these Terms.
- 5.2 **Liability:** The Bank shall only be liable for direct losses or damages if such losses or damages are caused directly by the Bank's fraud, gross negligence or willful breach of its obligations under these Terms.

Notwithstanding anything to the contrary, the Bank and/or any of its officers and employees shall not be liable for any indirect, incidental, consequential and/or secondary loss or damage, including any loss of profits or income, savings, opportunity loss, expectation loss, reliance loss or pure economic loss and any exemplary or punitive damages which may be suffered or incurred by the Applicant or any third party directly or indirectly even if the Bank has been notified of the possible damages or any claim against the Applicant or the third party.

## 6.0 BANK'S RIGHTS AND REMEDIES

### 6.1 Right to Debit

- (a) The Applicant shall ensure that it has sufficient funds in its account with the Bank. The Applicant agrees that the Bank shall have the right to earmark or to debit its accounts for any Indebtedness and Charges.
- (b) If as a result of such debit:
  - (i) the Applicant's account shall be overdrawn, subject to Clause 6.1(a) (*Right to Debit*), the Applicant agrees to pay the Bank interest at such rate as may be determined by the Bank and other customary bank charges which the Bank may impose; and/or

- (ii) any of the Applicant's cheques are dishonoured for insufficiency of funds, the Bank shall not be liable to the Applicant.
- (c) The Applicant consents to:
  - (i) the Bank debiting its accounts at the instructions of CIMB Islamic Bank Berhad ("CIMB Islamic") and to remit the moneys to CIMB Islamic for payment of any of the indebtedness, fees, taxes, charges, commissions, costs and expenses and other amounts in respect of the any trade services and financing products provided by CIMB Islamic to the Applicant; and
  - (ii) CIMB Islamic debiting its accounts at the instructions of the Bank and to remit the moneys to the Bank for payment of any of the Indebtedness and Charges.

## 6.2 Lien and Right to Set-off

The Bank has a lien upon and shall have the right, by giving the Applicant not less than seven (7) calendar days' prior written notice to withhold, combine, consolidate and/or merge any or all accounts of the Applicant (including but not limited to current, deposit or loan) in any currency and wherever situated or on deposit with the Bank, or any affiliates, at any branch or office of the Bank, whether held in a general or special account of deposit, or for safe-keeping or otherwise and the Bank shall be able to debit, set-off or transfer any sum standing credit in such accounts and/or the Cash Collateral [as defined in Clause 6.3(a)(i) (*Cash Collateral*) below] for the satisfaction of any Indebtedness and Charges.

## 6.3 Security

### (a) Cash Collateral

- (i) Upon request by the Bank, the Applicant shall provide cash as collateral ("**Cash Collateral**"). The Bank shall be entitled to debit the Cash Collateral from the Applicant's accounts to be placed with the Bank.
- (ii) The Cash Collateral shall be treated as security for the Indebtedness and Charges and shall not be released until full settlement of the Indebtedness and the Charges.
- (iii) The Applicant shall not create or permit to subsist any mortgage, assign, charge, pledge, lien or other security interest or encumbrance over the Cash Collateral.
- (iv) The Applicant shall not be entitled to any interest arising from the Cash Collateral at all times.

### (b) Covenant to Provide Further Security

Upon request by the Bank, the Applicant shall furnish additional security subject to the satisfaction of the Bank. All costs incurred shall be for the account of the Applicant.

## 7.0 DISCLAIMER ON MERCHANTABILITY AND SUITABILITY

The Bank makes no representation or warranty, express or implied as to the merchantability or suitability of the use of the Trade Products by the Applicant.

## 8.0 NOTICES

Unless otherwise provided in these Terms, all notices, requests, instructions and other communications or legal process in connection with the Application by the Bank to the Applicant shall be given in any one of the following manners and deemed to be duly served:

- (a) if sent by hand, upon delivery thereof;

- (b) if sent by ordinary or registered post to the addresses given in the Application (or last address in the Bank's record), and deemed received on the second (2<sup>nd</sup>) Business Day after posting save where such communication is returned undelivered to the Bank;
- (c) If sent by courier, and deemed received upon acknowledgement on the courier consignment note;
- (d) if displayed at the Bank's premises and/or website, and deemed effective upon such display being made; and/or
- (e) if sent by electronic transmission or mail, or other forms of instantaneous communication (including short messaging system (SMS) and voice recording), at the time they are sent.

Any change in the address or email address of the Applicant shall be effective and binding on the Bank when actual notice of such change has been given to the Bank.

Unless otherwise specified, all notices and communications to the Bank shall be in writing and signed by the Applicant, and sent to the Bank's address as may be notified from time to time and all notices from the Applicant shall take effect only upon the Bank receiving the same and evidence by acknowledgement of the Bank.

## **9.0 VARIATION**

Unless otherwise provided in these Terms, the Bank may amend any of the provisions in these Terms by giving the Applicant not less than twenty-one (21) calendar days' prior notice. The notice can be given in any of the ways referred to in Clause 8.0 (*Notices*) or through the Bank's website. The amendments shall take effect twenty-one (21) calendar days from the date of notification or earlier, if agreed by the Applicant.

## **10.0 DISCLOSURE AND CONFIDENTIALITY**

10.1 The Applicant agrees that the Bank is permitted to disclose any information or documents relating to the Application and the Applicant's affairs or accounts to such persons under Schedule 11 of the Financial Services Act 2013 including:

- (a) Bank Negara Malaysia or other regulatory authorities or enforcement authority or body (governmental or otherwise) under any Applicable Law in or outside Malaysia;
- (b) pursuant to any subpoena or request or order of the courts; and
- (c) where disclosure is required or permitted by applicable Laws.

10.2 The Applicant also agrees, consents to and authorises the Bank to disclose any information relating to the Applicant, these Terms, the Trade Transactions or the Trade Products provided by the Bank to:

- (a) any of the Bank's agents, service providers, auditors, legal counsel and/or professional advisors, in or outside Malaysia for facilitating and/or protecting the business, operations, facilities and services provided in connection with the Trade Products by the Bank and its Group Companies (as defined below);
- (b) any financial institutions with which the Applicant has or propose to have dealings with;
- (c) any insurer or takaful provider or insurance/takaful broker or direct or indirect provider of credit protection of the Bank or which is required for the maintenance and/or facilitation of the Trade Transactions or Trade Products;
- (d) any entity within the corporate group of CIMB Group Holdings Berhad, the Bank's ultimate holding company ("**Group Companies**") whether such Group Companies are residing, situated, carrying on business, incorporated or constituted within or outside Malaysia where the Bank deems disclosure necessary to give effect, complete, verify or restrict a Trade Transaction or instruction;



- (e) any tribunal, courts, governmental agencies or bodies or other relevant authorities to whom the Bank is required to make disclosures or have jurisdiction over the Bank whether in or outside Malaysia in order to comply with any order, demand, request or reporting requirement, or for the purposes of potential litigation or litigation involving the Bank as and when required or requested to do so from time to time and at any time; and
- (f) any potential transferee or assignee to whom the Bank is negotiating for the transfer, assignment and/or novation of any rights or obligations under or in relation to the Trade Transactions or Trade Products.

The Applicant understands and agrees that the consent given above cannot be withdrawn where such disclosure of the Applicant's information is necessary for the provision of the Trade Transactions or Trade Products, related services or the performance of the contract with the Applicant to comply with contractual or legal requirements.

Any disclosure by the Bank to Group Companies (within Malaysia) may also be for cross selling purposes provided always that **disclosure for cross selling purposes shall not be effected if such disclosure is objected by the Applicant** by contacting the Bank at the following telephone number or address (which may be changed by the Bank from time to time by notice to the Applicant): [Customer Resolution Unit (CRU). P.O. Box 10338, GPO Kuala Lumpur, 50710 Wilayah Persekutuan. Tel:+603 6204 7788 / e-mail: [contactus@cimb.com](mailto:contactus@cimb.com)].

## **11.0 PRIVACY CLAUSE**

The Applicant confirms that it has obtained the consent of the individuals ("**Relevant Individuals**") and has notified the Relevant Individuals:

- (a) of the disclosure and provision by the Applicant of the Relevant Individuals' personal data to the Bank for processing pursuant to the Personal Data Protection Act 2010 for the purpose of these Terms and Application;
- (b) that reference checks, including credit reference/reporting checks may be conducted on the Relevant Individuals to ascertain the status of the Applicant and the Relevant Individuals; and
- (c) of the disclosure of the Relevant individuals' personal data to the classes of parties described in the CIMB Group Privacy Notice (which is available at [www.cimb.com.my](http://www.cimb.com.my)).

The Applicant undertakes to update the Bank in writing should there be any changes to the personal data of any of the Relevant Individuals and any revocation of such consent, and the Applicant agrees that the Bank shall have the right to review and/or terminate the provision of the Trade Products should the said consent be revoked.

## **12.0 COMPLIANCE OF LAWS**

- 12.1 The provision of the Trade Products by the Bank is subject to the Bank's compliance with all Laws including any foreign exchange restrictions, anti-money laundering laws, anti-terrorist financing laws and/or imposition of sanctions on the Applicant, any persons or entities (and/or the beneficiaries) to whom financial and/or other services are provided in relation to the Application (irrespective of whether the said Laws have any legal and binding effect on the Bank).
- 12.2 The Applicant shall ensure that it complies with the Laws in all jurisdictions which are applicable to it.

## **13.0 THIRD PARTY UTILISATION**

The Applicant agrees to indemnify the Bank for all payment obligations of any third parties whom the Applicant had allowed to utilise the Trade Products whether or not the application is made by the Applicant or such third parties.

#### 14.0 CONCLUSIVENESS OF STATEMENT AND CERTIFICATE

A statement issued or certificate from the Bank as to the amount for which the Applicant is liable for or which is due to the Bank under this Application, shall in the absence of manifest error be conclusive and binding on the Applicant for all purposes including legal proceedings.

#### 15.0 MISCELLANEOUS

- 15.1 **Severance:** Any term and condition contained in these Terms which is illegal prohibited or unenforceable shall be severed and only be ineffective to the extent of such illegality, prohibition or unenforceability without invalidating the remaining terms and the validity, legality and enforceability of the remaining terms shall not be effected or impaired.
- 15.2 **Cumulative Rights and Remedies:** The Bank's rights under these Terms are cumulative and not exclusive of any other rights under any applicable Laws; and may be waived only in writing and specifically. Any delay in the exercise or non-exercise of any such right is not a waiver of that right.
- 15.3 **No Waiver:** No failure or delay by the Bank in exercising or enforcing any provision, right or remedy under these Terms shall be construed as a waiver thereof or limit, prejudice or impair the Bank's rights to take any action or exercise any right.
- 15.4 **Indulgences and Compromises:** The Bank shall not be in any manner prejudiced or affected by any time compromise, arrangement or indulgences which the Bank may accord or grant to the Applicant, beneficiary and/or any person or persons liable to the Bank in respect of or in connection with or howsoever arising under these Terms.
- 15.5 **Assignment:** The Applicant shall not assign or transfer any of its rights and/or obligations under these Terms. The Bank shall be entitled to assign and/or transfer its rights and obligations under these Terms with written notification to the Applicant.
- 15.6 **Governing Law and Jurisdiction:** These Terms and Application shall be governed by and construed in accordance with laws of Malaysia. The parties hereby submit to the exclusive jurisdiction of the Courts of Malaysia.

#### 16.0 TRADE SERVICES SPECIFIC TERMS

##### 16.1 International Chamber of Commerce ("ICC") Rules

Unless the parties mutually agree otherwise, the following Trade Products shall be subject to the applicable publication issued by ICC:

- (a) all DCs shall be construed in accordance with the latest Uniform Customs and Practice for Documentary Credits and Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation;
- (b) all SBLCs shall be construed in accordance with the latest International Standby Practices;
- (c) all SGs, BGs and QGs shall be construed in accordance with the latest Uniform Rules for Demand Guarantees;
- (d) all Collections will be undertaken subject to the latest Uniform Rules for Collection and the Supplement to Uniform Rules for Collection for Electronic Presentation;
- (e) the latest Uniform Rules for Bank-to-Bank Reimbursement; and
- (f) any applicable ICC Rules published by ICC from time to time.

If there is any conflicting terms between any ICC Rules and these Terms, these Terms shall prevail.



16.2 **Documentary Credit ("DC"):** The following terms shall apply to all DCs:

- (a) The Bank deals with Documents alone and not with Goods or performance of the Trade Transactions. The Bank is authorised to accept and/or pay or prepay any Documents drawn upon the Applicant which complies with the terms stated when opening the DC. The Bank is not concerned with the contract in relation to the Trade Transaction.
- (b) The Bank may at its discretion require advising/negotiation under this DC to itself or to any of its correspondent banks or agents.
- (c) The Bank may at its discretion reject the Documents if there is any discrepancy in any of them against the terms of the DC.
- (d) In respect of examination of the Documents drawn under the DC by the Bank, the determination of compliance by the Bank shall be final and conclusive.
- (e) The Bank shall have a lien on all Goods, Documents, insurance policies/*takaful* certificates and proceeds thereof with full power of sale over the Goods, for any obligations or liabilities present or future incurred by the Bank under and arising out of this DC.
- (f) Where a reimbursing bank has been nominated by the Applicant or the Bank, the DC shall be subject to the latest Uniform Rules for Bank-to-Bank Reimbursement.

If any of the Documents presented by such reimbursing bank contains any discrepancy and the reimbursing bank had accepted such discrepancy, the Applicant shall remain liable to pay the Bank notwithstanding the acceptance by the reimbursing bank of such discrepancies.

- (g) The Bank may at its discretion and without giving notice to the Applicant convert into Malaysian Ringgit equivalent for any payments to be made by the Bank under the DC.
- (h) The Bank shall be entitled to impose additional Documents and/or terms and conditions in respect of the DC before and after the issuance of the DC for the purpose of compliance with Laws.
- (i) The Bank shall be entitled to accept at its discretion any insurance policies/*takaful* certificates issued by other countries with clauses which are equivalent to the Institute Cargo clauses.
- (j) The Bank may issue the DC through its overseas branches. In case of any extension of the DC where the terms have been varied or modified, the modified and/or varied terms shall continue to the Applicant in all respects to the DC as so extended.
- (k) The Applicant acknowledges and agrees that the Bank shall not be responsible for the description, quantity, quality or value of the Goods or the performance of the Trade Transactions, or for the correctness, genuineness or validity of the Documents, or for any other cause beyond the Bank's control.
- (l) Endorsement of Transport Documents: In consideration of the Bank endorsing and releasing to the Applicant the air waybill/ original bill of lading/ parcel post receipt (collectively, "**Transport Documents**"), the Applicant agrees to: (a) keep the Bank indemnified in accordance with Clause 5.1 (*Indemnity*) of these Terms; and (b) accept the Transport Documents regardless of any discrepancy and/or incompleteness; and (c) pay all costs and expenses incurred.
- (m) Transfer DC
  - (i) Full Transfer means where all the rights and obligations of the Applicant in the original DC are transferred to a third party ("**Transferee**"). The Transferee shall have all rights as the beneficiary of such Transfer DC up to the transferred amount indicated in the Application Form, including any rights relating to any amendments. The Transferee shall be advised

directly of any subsequent amendments without prior written consent or notice to the Bank unless such amendments increases the value and/or quantity of Goods and/or substitutes any of the Documents.

- (ii) Partial Transfer means where only part of the rights and obligations of the Applicant in the original DC are transferred to the Transferee. The Applicant shall be advised of any subsequent amendments and thereafter, the Applicant shall indicate to the Bank whether or not the Transferee is to be advised of such amendments. The Applicant agrees to indemnify the Bank for any consequences as may arise from any delay and/or omission in the said indication.
  - (iii) the Applicant agrees that upon receipt by the Bank of the Documents of the Transferee, the Applicant shall deliver to the Bank the Documents drawn in accordance with the terms of the original DC ("**original Documents**") and the original Documents are to be attached by the Bank to the shipping documents in substitution of those presented by the Transferee ("**Substituted Documents**").
  - (iv) The Bank may in its discretion elect to pay the Applicant immediately or after the Bank has received the proceeds from the issuing bank. The Bank is under no obligation to negotiate any drawing(s) under the transferred DC.
  - (v) In the event the Applicant fails to deliver to the Bank the Substituted Documents upon the Bank's demand, the Bank is authorised to dispose the original Documents in accordance with instructions from the original DC issuing bank without any liability on the Bank's part.
- (n) Documentary Credit ("**DC**") Drawing:
- (i) The Bank shall not be responsible for any act, omission, default, suspension, insolvency or bankruptcy of any correspondent bank or agent, or for any delay in remittance, loss in exchange or loss of items or its proceeds during transmission or in the course of collecting payment from the DC issuing bank, until such time the Bank has received the payment.
  - (ii) The Applicant authorises the Bank to debit its account(s) for any presentation and/or drawings made in anticipation of the receipt of payment from the DC issuing bank and for any disbursement made in connection to it.
  - (iii) If required by exchange regulations, the Bank shall release the Documents against provisional payment in local currency and written undertaking from the DC issuing bank to remain responsible for any exchange fluctuation.
  - (iv) If immediate credit has been given for the Documents stipulated in the Application Form, the Parties agree that such credit is conditional and it is subject to receipt by the Bank of the requisite payment from the DC issuing bank; in the absence of such receipt, the Applicant will upon the Bank demand, reimburse the Bank for the amount so advanced plus the agreed rate of interest for the time outstanding. If the any of the Documents is returned unpaid, drafts and/or documents are to be returned to the address mentioned on the Application Form.
  - (v) It is understood that in receiving the Documents for presentation, the Bank acts only as presenting bank and assumes no responsibility beyond the exercise of due care. All items are credited subject to final payment in cash or solvent credits. The Bank will not be liable except for its own negligence.

### 16.3 **Outward Bills for Collection ("**OBC**")**

- (a) The Applicant agrees that it shall exercise due care in the nomination of any correspondent bank or agent to whom the Documents maybe sent for collection. The Bank shall not be responsible for any act, omission, default, suspension, insolvency or bankruptcy of any such correspondent

bank or agent nominated by the Applicant, or for any delay, loss or damage during transmission or in the course of collection.

- (b) In the absence of such nomination, the Bank may nominate any correspondent bank or agent on behalf of the Applicant and the Applicant agrees to comply with any terms and conditions which may be imposed by such correspondent bank or agent.
- (c) The Bank is authorised to debit the account(s) of the Applicant for any advances made in anticipation of collection as well as all disbursement made in connection with it.
- (d) It is understood that in receiving the Documents for collection, the Bank acts only as collecting agent and assumes no responsibility unless the same is caused directly by the Bank's fraud, gross negligence or willful breach of its obligations under these Terms. All items are credited subject to final payment in cash or solvent credits.

#### **16.4 Standby Letter of Credit ("SBLC")**

- (a) The Applicant authorises the Bank to pay all claims drawn upon the SBLC pursuant to these Terms.
- (b) The Bank may at its discretion restrict advising under the SBLC to its own offices or to any correspondent or agents of the Bank's choice.
- (c) The Bank is authorised to instruct any bank or branch to dispatch any claim by one or more mail or any other method of conveyance at its sole discretion.
- (d) The Bank may at its discretion reject the claims if there is any discrepancy in the claim document against the terms of the SBLC.
- (e) In respect of examination of the claim documents drawn under the SBLC the Bank's determination of compliance shall be final and conclusive.
- (f) It is understood that the Bank only deals with the Documents and not with Goods or performance of the Trade Transactions. The Bank's duty in this regard is simply to receive the Document on behalf of the Applicant.
- (g) The Bank is authorised to make any additions to the Documents and/or terms and conditions specified under this SBLC, which the Bank may consider necessary including compliance with any Laws but the Bank are not obliged to do so.
- (h) The Bank is authorised, at its discretion, to issue the SBLC through the Bank's overseas branches. In case of any extension or renewal of the SBLC, increase or other modification of its terms, the terms in the SBLC shall continue to be binding upon the Applicant in respect of the SBLC so extended, renewed, increased or modified.

#### **16.5 Shipping Guarantee ("SG")**

- (a) The Bank is authorised to: (i) honour any claim (including the acceptance of any Document presented) made under any DC, IBC or Documents relating to any released Goods and to pay the invoiced amount of the Goods or the value of the Goods (whichever is higher) without examining any of the presented Documents and whether or not there is any discrepancy(ies); and (ii) utilise any Transport Documents in the Bank's possession for the redemption of any SG;
- (b) The Applicant shall promptly accept any Document presented for the payment of the relevant Goods (whether discrepant or not) and shall indemnify the Bank and each other Indemnified Party in accordance with Clause 5.1 (*Indemnity*).

- (c) Goods and/or Documents are released to the Applicant for the purpose of taking delivery of and selling the Goods.
- (d) The Applicant agrees that upon the receipt of the relevant bill(s) of lading, the Applicant shall procure the return of the said SG within reasonable time and deliver same to the Bank for cancellation.
- (e) The Applicant agrees that its liabilities in respect of the SG shall continue and shall not be reduced until the SG has been returned to the Bank and the Bank has been released from all its liabilities under the SG.
- (f) In the event the SG is not be returned to the Bank within three (3) months from the date of issuance, the Applicant authorises the Bank to debit the Applicant's account for any Charges which may be incurred by the Bank.

#### 16.6 **Bank Guarantee ("BG"):**

- (a) The Applicant agrees that:
  - (i) it shall not, at any time on or before the expiry date of the BG, instruct and/or cause the Bank to revoke and/or discharges its liabilities to pay under the BG or any part thereof;
  - (ii) where the BG provides for reduction of amount guaranteed under the BG ("**BG Amount**") upon occurrence of an event, unless such event is determinable by the Bank, the Applicant shall remain liable to the Bank up to the original BG Amount unless and until the Bank receives a satisfactory written confirmation from the beneficiary of any reduction of BG Amount; and
  - (iii) upon demand by the beneficiary, the Bank shall have the right and authority to pay to the beneficiary forthwith any sum or sums up to BG Amount, without any reference to the Applicant, and without any regard or inquiry to any disputes or contestations which may be raised by the Applicant and/or any other party, and without having to refer or interpret any document, agreement, understanding or note between the Applicant and the beneficiary, notwithstanding anything contained in the BG.
- (b) The Bank shall be entitled to convert any BG denominated in foreign currency into Malaysian Ringgit after making payment in respect of the claim under the BG and the Applicant shall be liable to the Bank for the amount in Malaysian Ringgit of the converted BG.
- (c) In the event of a default of payment by the Applicant, the Bank shall be entitled to impose the Charges and/or any interest or default interest on outstanding sum. The default interest shall be calculated from the date of settlement of BG claim by the Bank until date of full repayment of the outstanding sum by the Applicant.
- (d) In the event the beneficiary agrees to cancel the BG, the BG shall be cancelled and the Bank's liability under such BG shall be fully discharged regardless whether the original BG has been returned to the Bank or not.
- (e) In case of any amendment, extension and/or renewal of the BG or other modification of its contents and terms, the terms of the BG shall continue to be binding upon the Applicant in respect of the BG so amended, extended or renewed.
- (f) In the event that the earlier effective date of the BG is required or requested by the Applicant, the Applicant confirms that the Applicant is not in default of any of the Applicant's obligations that will give rise to any claims or demands capable of being made by the Beneficiary under the BG. Further, the Applicant irrevocably agrees and undertakes to repay the Bank, notwithstanding any

contestation by the Beneficiary or any third party, in the event of receipt by the Bank of a valid claim under the BG in respect of a default during the period between the effective date and the date of issuance of the BG.

**16.7 Quick Guarantee (“QG”):** In addition to Clause 16.6 (*Bank Guarantee*), the Applicant agrees that the issuance of QG is subject to the following:

- (a) the form and contents of the QG are acceptable to the Bank and it is in compliance with all applicable Laws;
- (b) where the Applicant is an individual, he/she shall have provided the Bank its relevant individual business documents and authorisations acceptable to the Bank and fulfilled all other such conditions (including the execution of such other agreements or documents) as may be imposed by the Bank; and
- (c) where the Applicant is not an individual, the Applicant shall have provided the Bank its corporate documents, authorisations, and other documents acceptable to the Bank and fulfilled such other conditions (including the execution of such other agreements or documents) as may be imposed by the Bank.

Notwithstanding the above, the Bank reserves the right to approve or reject the application without having to disclose any reason whatsoever to the Applicant.

## **17.0 TRADE FINANCING SPECIFIC TERMS**

**17.1** The following terms and conditions shall apply to all Trade Financing:

- (a) any Trade Transaction drawn by the Applicant and presented to the Bank for acceptance and/or discounting from time to time are for the financing of the genuine trade transactions for the purchase from or sale to resident or non-resident;
- (b) for Trade Transaction drawn by the Applicant to finance purchase of any Good, the Goods are not subject to any hire purchase or intended to be a fixed asset of the Applicant or to be leased to another person;
- (c) for Trade Transaction drawn by the Applicant to finance sales of Goods on credit terms, the Goods are not subject to a sale and lease-back agreement or the Applicant does not intend to sell or have not pledged to sell or have not "sold" the receivable under a factoring agreement or the Goods are not subject to any hire purchase;
- (d) where any of the parties to the Trade Transaction is a sole proprietor or partnership, the sole proprietor or majority of the partners are not the same person(s);
- (e) where any of the parties to a Trade Transaction are related corporation within the meaning of Section 7 of the Companies Act 2016, the Trade Transaction is a bona fide transaction evidenced by proper and adequate documentation;
- (f) in respect of any Trade Transaction which is drawn on the Bank for acceptance and/or discounting, the Applicant has not or will not obtain any other forms of financing, whether by way of a lease, hire purchase, or factoring; and
- (g) the Applicant is fully aware of the exposure on the foreign exchange rate risk upon the disbursement and/or settlement of the Trade Transaction.

**17.2 Bankers Acceptance (“BA”):** In addition to Clause 17.1, the Applicant agrees that it shall, upon request by the Bank at any time, present to the Bank the BA (whether in physical or electronic form) immediately or no later than three (3) calendar days from the Bank’s request, and such BA shall conform in all respects with the requirements of the Bank. In the event that the Applicant fails or refuses to comply with the

preceding provisions of this clause, the Bank shall have the right to refuse to honour any BA presented by the Applicant and exercise its other rights and remedies under these Terms.

**17.3 Trust Receipt ("TR"):** In addition to Clause 17.1, as long as the Applicant remains liable under these Terms in respect of any Trade Products, if any Documents or Goods are held by or released to the Applicant or to its order, the Applicant:

- (a) will hold such Documents and Goods (and its proceeds of sale and/or any insurance/*takaful*) on trust for the Bank (or, if a trust is not recognised and enforceable, hold to the order of the Bank) exclusively for the purpose agreed between the Bank and the Applicant from time to time in respect of the Trade Products being provided;
- (b) have full title to the Goods as undisclosed agent of the Bank and the Applicant undertakes and agrees to hold the Goods on trust on behalf of the Bank and confirms that the Goods are in the Applicant's possession and the Bank has the right to take delivery of the Goods at any time, if the Bank so required;
- (c) agrees to land and store the Goods in the name of the Bank and if the Goods are held in a warehouse, to hold the warrant in trust for the Bank as agent and/or trustee of the Bank and to deliver to the Bank the warrant upon demand and to hold the Goods until the sale of the Goods;
- (d) will, upon receipt, promptly pay to the Bank the proceeds of sale and/or insurance of the Goods;
- (e) in the event of the Goods or any portion thereof has been sold or delivered before full payment of the bill, the Applicant undertakes to hold the proceeds of such sales as agent and/or trustee of the Bank and subject to the Bank's security thereon and to pay the Bank the sale proceeds of the Goods forthwith upon its receipt;
- (f) in the event of breach of any obligation under these Terms including non-payment at maturity of any Indebtedness by the Applicant or any assignment for the benefit of creditor by the Applicant or filing of any petition of bankruptcy against the Applicant, the Bank may, at any time, take possession of the Goods, or of the sales proceeds of the same and all obligations and liabilities shall immediately become due and payable;
- (g) the Goods are sold on an "as is basis", free from all encumbrances, charges, liens and/or restraints whatsoever and without any representation or warranty in respect thereof;
- (h) agrees to comply with any instructions or request which the Bank may give to the Applicant in relation to such Documents and Goods; and
- (i) acknowledges that the Bank may sell and/or realise the said Goods in such manner and on such terms and conditions it deems fit.

**17.4 Without Recourse Export Financing ("WREF"), Foreign Bill Purchased / Discounted ("FBP/D"), Domestic Bill Purchased / Discounted ("DBP/D") and Export Credit Refinancing ("ECR"):** In addition to Clause 17.1, the Applicant agrees that:

- (a) the financing sum shall be based on the negotiated amount of the Documents and subject to such rate as determined by the Bank ("**Financing Sum**"). The Financing Sum shall be remitted into the Applicant's account maintained with the Bank stipulated in the Application Form.
- (b) Notwithstanding the foregoing, the Bank may deduct any Charges incurred in connection with the negotiation of the Documents from such Financing Sum.
- (c) The Bank has the discretion to accept or reject by the Applicant's request to negotiate the Documents and any negotiation of the Documents shall be subject to the following:
  - (i) the Applicant shall have opened an operating account with the Bank;



- (ii) each of the representations and warranties remains accurate on the date of the proposed negotiation; and
  - (iii) unless otherwise agreed by the Bank, the Bank shall have received: (iii-i) the original irrevocable DC and its amendment, if any; (iii-ii) the acceptance of the Documents and confirmation of the maturity date for payment from the issuing bank or the confirming bank, as the case may be via an authenticated tele-transmission; and (iii-iii) the Documents under the related DC.
- (d) **WREF:**
- (i) In the event that the Applicant receives any payment in relation to the DC or proceeds of the sale under the Trade Transactions, the Applicant shall immediately pay the Bank the monies received and if it is not possible, hold such monies on trust for the Bank.
  - (ii) The Bank shall have full recourse to the Applicant in the event of any: (ii-i) fraud and/or misappropriation of funds; (ii-ii) breach of any of the representations and/or warranties and/or terms and conditions of these Terms; (ii-iii) shortfall between the principal amount financed and the payment received from the issuing bank; (ii-iv) judicial or other official order preventing payment on the DC; and (ii-v) non-payment from the DC issuing bank for whatever reason.
  - (iii) The Applicant shall:
    - (iii-i) execute and/or caused to be executed and delivered to the Bank, such documents, agreements, letters and instruments for the purpose of securing the full benefit, title and interest by the Bank of the DC, the Documents and the Goods;
    - (iii-ii) cooperate with the Bank to obtain payment of the amount drawn under the DC from the issuing bank or the confirming bank, as the case may be;
    - (iii-iii) assist the Bank in resolving any discrepancies alleged by the issuing bank or the confirming bank, as the case may be, in any of the Documents or any other disputes regarding such payment; and
    - (iii-iv) notify the Bank if it becomes aware of any events or circumstances that will affect the Bank's rights over receipt of payment of the amount drawn under the DC.
  - (iv) The Applicant assigns absolutely to the Bank all of their rights, titles, benefits and interest in: (iv-i) payments under the DC; (iv-ii) the Goods; (iv-iii) the proceeds of the sale from the Trade Transactions; and (iv-iv) all insurance on the Goods free of any charges or encumbrances whatsoever.

-END-