

# Trade Finance Terms and Conditions

This document contains important information.  
**Please read carefully** and retain for future reference.

Effective from 10th May 2022



# Trade Finance

## Terms and Conditions

These terms and conditions apply in each case where Allied Irish Banks, p.l.c. (the “Bank”) agrees to (a) issue or establish an Undertaking (as defined below) for the benefit of a customer; and (b) handle or process a Documentary Collection (as defined below) at the request of a customer (the “Terms and Conditions”). These Terms and Conditions are incorporated into each request or application for the issue of an Undertaking or the handling of a Documentary Collection as described in these Terms and Conditions.

Undertakings and Documentary Collections may incorporate and rely on the codes and practices of the International Chamber of Commerce. This is explained in more detail in these Terms and Conditions. Additional information in relation to the International Chamber of Commerce codes and practices is available on request from the Bank’s Trade Finance team.

These Terms and Conditions are in force from the date set out below and replace all previous versions. These Terms and Conditions will apply to all Undertakings and Documentary Collections entered into after the effective date.

Effective from 10th May 2022

## Contents

Page

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1.	Interpretation	1
2.	Other applicable Terms and Conditions	4
3.	Correspondent Banks	4
4.	Issuance of Trade Undertakings	4
5.	Form and Communication of Undertaking	5
6.	Charges	6
7.	Payments under and Administration of Trade Undertakings	6
8.	Reimbursement and Currency Conversion	7
9.	Indemnities	7
10.	Set-Off	8
11.	Payments to be Made in Full	8
12.	Bank's Right to Debit	9
13.	Limitation of Our Liability to You	9
14.	Your liability to Us	11
15.	Force Majeure	12
16.	Representations and Warranties	13
17.	Documentary Credits and Standby Letters of Credit	13
18.	Guarantees, Counter-Guarantees, Bonds, Indemnities, undertakings and similar instruments	17
19.	Documentary Collections	19
20.	Letters of Indemnity	21
21.	Notices	22
22.	Successors and Assigns	23
23.	Variations	23
24.	Continuing Agreement	23
25.	Miscellaneous	24
26.	Law and Jurisdiction	25
27.	Data Protection	25

# 1 Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires:

**“Account”** means any account with us in your name or to which you are beneficially entitled at any of our branches in any country or territory.

**“Affiliate”** means in relation to a person, a Subsidiary, or Holding Company of that person and a Subsidiary of such Holding Company.

**“Application”** means request or application for the issue of an Undertaking or for the provision of a Documentary Collection.

**“Authorised Signatory”** means each person specified in your mandate to us, or other form or notice deemed acceptable by us, and notified to us as an authorised signatory who is authorised to request the issue of an Undertaking by us, and / or to give notices to us and generally to act on your behalf.

**“Bank”** means Allied Irish Banks, p.l.c. and its successors and assigns.

**“Business Day”** means a day (other than a Saturday or a Sunday) on which commercial banks are generally open for business in Dublin.

**“Collection Documents”** means any shipping and financial documents handled or processed by us including, but not limited to, bills of lading, invoices, insurance policies, certificates of origin, certificates of quality and bills of exchange.

**“Contractual Currency”** means the currency in which a payment falls due pursuant to the relevant underlying contract to which the Undertaking or Documentary Collection relates.

**“Counter Indemnity to the Bank”** means the counter indemnity which has been or will be executed by you in consideration of us agreeing at your request to issue a guarantee or to issue an indemnity to another bank to enable them to issue a guarantee.

**“Correspondent Bank”** means a bank which provides services to us as our intermediary or agent in connection with a financial transaction .

**“Credit”** means a documentary credit or standby letter of credit.

**“Credit Request”** means any Application made by you for the issue of an Undertaking which is a Credit.

**“Customer”** means any person who requests or applies for an Undertaking or requests that an Undertaking and / or Documentary Collection be handled or processed either for their benefit or for the benefit of another, and also includes its successors and assigns.

**“Documentary Collection”** means documentary collections handled or processed by us at your request and / or on your behalf as set out under the heading “Documentary Collections”.

**“Guarantee Instrument”** means a guarantee, counter-guarantee, bond, indemnity, undertaking or similar instrument.

**“Guarantee Request”** means any Application for the issue of an Undertaking which is a Guarantee Instrument.

**“Guarantor”** means each person or company responsible to us for any and all moneys, obligations and liabilities from time to time due and / or owing by you to us or incurred by us for your account.

**“Holding Company”** means in relation to a company or corporation, any other company or corporation of which it is a Subsidiary.

**“Indemnitees”** has the meaning set out under the heading “Indemnities”.

**“ISP 98”** means the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof on the date the relevant Credit is issued.

**“Losses”** means loss, damage, charge, cost, payment or expense, including any loss, damage, charge, cost, payment or expense arising out of a claim by a third party.

**“Material Adverse Change”** means any event, condition or change which materially and adversely affects or could reasonably be expected to materially and adversely affect the assets, liabilities, financial results of or operations, financial condition, business or prospects of the Customer.

**“Subsidiary”** means in relation to a company or corporation, any company or corporation:

- (a) which is controlled, directly or indirectly, by the first-mentioned company or corporation; or
- (b) more than half the issued share capital of which is owned, directly or indirectly, by the first-mentioned company or corporation; or

(c) which is a subsidiary of another subsidiary of the first-mentioned company or corporation

and for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or control the composition of its board of directors or equivalent body.

“**SWIFT**” means the Belgium based Society for Worldwide Interbank Financial Telecommunications.

“**TradeAccess**” means the internet service provided by us to you on request and at our discretion to enable you to request the provision of trade finance services and related services from us.

“**Undertaking**” means any Credit, Guarantee Instrument or other form of undertaking for your benefit.

“**UCP**” means the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits in effect on the date the relevant Credit is issued.

“**URC**” means the International Chamber of Commerce Uniform Rules for Collections in effect on the date a Documentary Collection is agreed to by us.

“**URDG**” means the International Chamber of Commerce Uniform Rules for Demand Guarantees in effect on the date a Guarantee is issued.

“**Website**” means [www.aib.ie](http://www.aib.ie) or any other website operated by us on which we make available these Terms and Conditions.

1.2 In these Terms and Conditions, unless the context otherwise requires:

1.2.1 the Bank is also referred to as “we”, “our” or “us” and the Customer is also referred to as “you” or “your”. Reference to “both of us” refers to both the Bank and the Customer.

1.2.2 references to these Terms and Conditions (or to any provision of it) or any other document are references to these Terms and Conditions, that provision or that document as in force for the time being and as amended, varied or supplemented from time to time under its terms or with the agreement of the relevant parties;

1.2.3 where the context so permits, the singular includes the plural and vice versa and references to

persons include references to companies.

## 2 Other applicable Terms and Conditions

- 2.1 Our usual banking practice and other terms and conditions, including but not limited to those relating to TradeAccess and business lending, and other agreements or instruments entered into by both of us ("**Other Terms**"), will continue to apply. This includes where any of these Terms and Conditions do not cover a particular situation.
- 2.2 Where any of the terms of an Application and these Terms and Conditions are in conflict with any Other Terms, the Application and these Terms and Conditions shall prevail to the extent of such conflict only. All other provisions of those Other Terms shall remain unaffected.

## 3 Correspondent Banks

- 3.1 We may issue or establish any Undertaking through any Correspondent Bank and such Undertaking shall be construed as an Undertaking for the purposes of these Terms and Conditions. We will let you know if we have issued or established an Undertaking through a Correspondent Bank.
- 3.2 We shall not have any responsibility for or any liability in connection with or due to the insolvency or closure of any Correspondent Bank, or any failure of the Correspondent Bank to take any action with respect to an Undertaking. You accept all risk arising from or in connection with the insolvency or closure of any Correspondent Bank, or any failure of the Correspondent Bank to take any action with respect to an Undertaking.

## 4 Issuance of Trade Undertakings

- 4.1 Notwithstanding anything to the contrary that may be expressed in or implied by these Terms and Conditions, nothing in these Terms and Conditions shall oblige us to issue or assume any Undertaking.
- 4.2 An Undertaking may be issued or assumed by us only upon receipt of an irrevocable Application which is:
  - 4.2.1 in writing in our then current standard form in respect of the relevant Undertaking and duly signed by an Authorised Signatory; or

- 4.2.2 made by way of electronic or such other means of communication as we shall from time to time require or agree to accept.
- 4.3 We shall be entitled to assume without enquiry:
  - 4.3.1 that any Application for the issue of an Undertaking purporting to be signed by an Authorised Signatory or made by email or other electronic communication is genuine; and
  - 4.3.2 that the authority of each Authorised Signatory has not been revoked or curtailed unless we have received and acted upon a notice in writing to the contrary, and that the Application is duly signed on your behalf.
- 4.4 Each Application for the issue of an Undertaking, including the terms and conditions of any Credit Request or Guarantee Request, shall be deemed to incorporate these Terms and Conditions in full.
- 4.5 Where there is any conflict or ambiguity between these Terms and Conditions, an Application for the issue of an Undertaking, and / or an Undertaking, the following order of precedence shall apply (but only to the extent of such conflict or ambiguity):
  - 4.5.1 the Undertaking (including any Undertaking amended in accordance with these Terms and Conditions);
  - 4.5.2 the Application for the issue of an Undertaking (including a Credit Request or Guarantee Request), and
  - 4.5.3 the Terms and Conditions.  
All other provisions of these Terms and Conditions shall remain unaffected.
- 4.6 We may, in our sole discretion, agree to amend any Undertaking issued pursuant to these Terms and Conditions upon receiving a written request from an Authorised Signatory. For the avoidance of doubt nothing in these Terms and Conditions shall oblige us to amend any Undertaking.

## **5 Form and Communication of Undertaking**

- 5.1 Each Undertaking and any communication relating to it or to a Documentary Collection shall be: (a) in English, unless otherwise agreed between the parties; and (b) sent by letter, SWIFT or other electronic means (in plain language or in code) at our discretion.



- 5.2 You agree that, at our discretion:
- 5.2.1 the UCP or ISP 98 may apply to any Undertaking which is a Credit;
  - 5.2.2 the URDG may apply to any Undertaking which is a Guarantee;
  - 5.2.3 the URC may apply to any Documentary Collection handled or processed by us. The relevant Undertaking or Documentary Collection shall specify if the UCP, ISP 98, URDG or URC is applicable.

## **6 Charges**

- 6.1 You shall pay all of our fees or commissions in respect of each Undertaking and / or each Documentary Collection. These will be at the rates set out in our then current Schedule of International Transaction Charges or at rates which may be negotiated and agreed between both of us from time to time. You shall make the payments at the times which are agreed between both of us.
- 6.2 Unless otherwise agreed in writing by us, you shall reimburse to us the charges of any Correspondent Bank, which shall be separate from and additional to our fees and commissions.

## **7 Payments under and Administration of Trade Undertakings**

- 7.1 You authorise us to pay each amount in the Contractual Currency and to comply with each demand made on us or any Correspondent Bank in accordance with the terms of each Undertaking without: (a) any investigation, reference to or other authority from you; or (b) requiring evidence that any amount is or was due from you under any underlying contract to which the Undertaking relates, and despite you or your Affiliate disputing the validity of any demand or the expiry date of such Undertaking.
- 7.2 You agree that any such demand made on us or any relevant Correspondent Bank, and deemed to be acceptable by us, shall be binding on you. Each demand deemed to be acceptable by us or any such Correspondent Bank shall be conclusive evidence that we or such Correspondent Bank were liable to pay under the relevant Undertaking.

- 7.3 Neither we nor any Correspondent Bank shall have any liability, and you will have no claim against us or any Correspondent Bank, for any act or omission, by us or such Correspondent Bank, or our respective employees or agents, in relation to any Undertaking if the act or omission was in good faith and in accordance with applicable laws and customs.

## 8 Reimbursement and Currency Conversion

- 8.1 You shall promptly make available in a designated bank account with us (the “**Designated Account**”) on demand all amounts paid or incurred by us or any Correspondent Bank under any Undertaking or any Documentary Collection (including, but not limited to, our commission or commission of any Correspondent Bank and all interest, charges and expenses payable to or incurred by us or any Correspondent Bank). You authorise us to debit such amounts from the Designated Account. You may opt to change your nominated Designated Account from time to time by giving us prior notice in accordance with the section headed “Notices”.
- 8.2 Where a draft (ie, a written undertaking to pay on demand or at a determinable future date a stated amount of money given by us or a Correspondent Bank to a beneficiary on your instruction) is accepted under any Undertaking which is a documentary credit, you shall make available in the Designated Account all amounts required to meet such draft on or before maturity, as required by us.
- 8.3 No payment to us under these Terms and Conditions pursuant to any judgment or order of any court or otherwise shall discharge your liability in respect thereof unless payment in full has been received. To the extent that the amount of any payment on actual conversion falls short of the amount of the relevant obligation expressed in the Contractual Currency, we shall have a further and separate cause of action against you for the recovery of the difference.

## 9 Indemnities

- 9.1 You shall pay, on demand on a full indemnity basis, all costs and expenses that we incur in connection with the negotiation and preparation, amendment,

extension, alteration, and enforcement of these Terms and Conditions .

- 9.2 You shall indemnify us on demand against all Losses howsoever arising which we or our branches, offices, Correspondent Banks, agents or Affiliates (“**Indemnitees**”) (or any one of them) may incur or sustain:
- 9.2.1 by reason of issuing, establishing or enforcing any Undertaking or arising from or in connection with any Undertaking;
  - 9.2.2 from or in connection with any Documentary Collection, including all legal and other costs, charges and expenses which we may incur in connection with the enforcement, or attempted enforcement, of our rights under these Terms and Conditions and / or any Undertaking or associated with any Documentary Collection.
- 9.3 Losses of any Indemnitee to which this section headed “Indemnities” applies shall be deemed to be our direct Losses. For the avoidance of doubt, our direct Losses shall include the Losses of any Correspondent Bank.

## 10 Set-Off

We may, at any time without prior notice, apply any credit balance on any Account in (or towards) satisfaction of any unpaid sum then due and payable or other liability from time to time due or owing by you to us under these Terms and Conditions. If the credit balances on any Accounts are in different currencies, we may convert either balance at a market rate of exchange (the rate of exchange being determined on the date of conversion) to set it off against another amount. Any agreement that all or any part of the balance on any such Account is to be held on fixed time deposit shall be for the purpose of calculation and payment of interest only and shall not prejudice our rights or obligations under or pursuant to this clause or any other term of these Terms and Conditions. This right applies in addition to our other rights and remedies under these Terms and Conditions or applicable law.

## 11 Payments to be Made in Full

- 11.1 All payments to be made by you under these Terms and Conditions shall be made in full without set

off or counterclaim and free and clear of and without deduction of or withholding for or on account of any tax of any nature now or subsequently imposed unless required by law.

- 11.2 If you are required by law to make any deduction or withholding, you shall simultaneously pay to us such additional amount as may be necessary to enable us to receive, after all such payments, deductions and withholdings, a net amount equal to the full amount payable. You shall within thirty (30) days of our request forward to us an official receipt or other official documentation evidencing that the amount of such deduction or withholding has been paid to the appropriate authority. For the purpose of this section headed "Payments to be Made in Full", the term 'tax' includes all levies, imposts, duties, charges, fees, deductions, withholdings, turnover tax, transaction tax, stamp tax and any restrictions or conditions of any nature in any relevant jurisdiction.

## **12 Bank's Right to Debit**

In the event of a receiver and/or liquidator being appointed in respect of the Customer or in the event that we determine, following prior consultation and discussion with you as to changes in your circumstances, that a Material Adverse Change has occurred, we shall be entitled immediately to debit to any Account, the maximum total amount of our actual and contingent liability under these Terms and Conditions and each Correspondent Bank's actual and contingent liability in respect of each Undertaking (notwithstanding that no actual payment has been made by you). Where no Account is maintained by us at the time, we shall be entitled to debit the above amounts to an account at such of our branches as we may choose specifically opened for such purpose and which we are hereby authorised to open. We shall refund any excess promptly after the contingent liability has crystallised or ceased to exist.

## **13 Limitation of Our Liability to You**

- 13.1 Notwithstanding anything stated elsewhere to the contrary, our liability to you for any Losses arising from or in connection with any Undertaking or Documentary Collection to which these Terms

and Conditions apply, shall be limited to the amount of your actual direct losses, to the extent attributable to our gross negligence, wilful default or fraud arising out of or in connection with any such Undertaking or Documentary Collection.

13.2 We shall not be liable for any increased costs or expenses, any loss of profit, business, contracts, revenues, anticipated savings, opportunities, goodwill or for any special, indirect or consequential loss or damages.

13.3 The Indemnitees shall not be responsible for the following, or for any Losses arising from or in connection with the following, and none of the following shall, in any way, affect our or the Indemnitees' rights hereunder:-

13.3.1 any claim or proceedings of breach or non-performance of underlying contract to which the Undertaking or Documentary Collection relates, including without limitation any claim or proceeding related to:

- (a) the existence, character, description, quality, quantity, weight, condition, packing, value or delivery of goods purporting to be represented by the relative documents;
- (b) any difference in character, description, quantity, quality, weight, condition or value of goods from that expressed in such documents;
- (c) the form, legal effect, correctness, validity, sufficiency or genuineness of documents even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged;
- (d) the time, place, order or manner in which shipment is made, partial, incomplete shipment or failure or omission to ship any or all goods;
- (e) the character, adequacy, validity or genuineness of any insurance, the solvency or responsibility of any insurer, or any other risk connected with insurance;
- (f) any deviation from instructions, delay, default or fraud by the shipper or anyone else in connection with goods or the shipping thereof;

- (g) delay in arrival or failure to arrive of any or all of the goods or any of the documents relating thereto or delay in giving or failure to give notice of arrival or any other notice;
  - 13.3.2 the solvency, responsibility or relationship to the goods of any party issuing any documents in connection with the goods;
  - 13.3.3 any breach of contract between any shippers or vendors and you;
  - 13.3.4 failure of any draft to bear any reference or adequate reference to the relevant Credit, or failure of documents to accompany any draft at negotiation, or failure of any person to send documents apart from drafts as required by the terms of the Credit or failure of any person to note the amount of any draft on the reverse of a Credit or to surrender or take up a Credit;
  - 13.3.5 any breach by you of these Terms and Conditions or any Undertaking or Documentary Credit, or where you have acted fraudulently or with gross negligence;
  - 13.3.6 any consequences arising from causes beyond our control, as further described under the heading "Representations and Warranties".
- 13.4 We will not be liable to you for any of the losses or damages which are excluded under this section headed "Limitation of our Liability to You" in any circumstances, even if we have been advised of or could reasonably have foreseen the possibility of such damages or the loss or damage relates to any action brought by a third party.

## **14 Your liability to Us**

- 14.1 Your liability shall not be lessened or impaired by:
  - 14.1.1 any relief or waiver given by us to any other person;
  - 14.1.2 any relief or waiver given to us by any beneficiary or other party to any Undertaking;
  - 14.1.3 any variation, renewal or release of any rights, remedies or securities against any other person;
  - 14.1.4 any legal limitation, disability, incapacity, or

- other similar circumstances relating to you, any Guarantor or any other person;
- 14.1.5 any invalidity in, or irregularity or unenforceability of, or any variation to these Terms and Conditions or any Undertaking or any bill or draft issued under these Terms and Conditions or any Undertaking;
- 14.1.6 any of the Indemnitees having previously paid against fraudulently signed or presented documents (whether or not we have been reimbursed for such drawing); or
- 14.1.7 anything done or omitted to be done which but for this provision might constitute to you a legal or equitable discharge or defence.
- 14.2 Any settlement or discharge between you and us, or between you and any Indemnitee, shall be conditional on no security or payment owed to any of the Indemnitees by you (directly or indirectly through us) being evaded, set aside or ordered to be refunded for any reason whatsoever. We shall be entitled to recover from you the value which we have placed on such security or the amount of any such payment as if such settlement or discharge had not occurred.
- 14.3 Your liability under these Terms and Conditions shall not be affected in any way by any change in our constitution or the manner in which we are legally structured, our absorption in, or amalgamation with, or the acquisition of all or part of our undertaking by, any other person, or any reconstruction or reorganisation of any kind.

## **15 Force Majeure**

- 15.1 If performance of the Indemnitees' obligations is prevented or hindered, by reason of labour disputes (including but not limited to strikes, lock-outs and injunctions), acts of God, war, hostilities, terrorist activity (actual or perceived), riot, fire, shortage, natural disaster or interruption of communications, computer or other electronic systems, compliance with applicable laws, regulations or orders, or any other cause beyond our reasonable control, the Indemnitees will not be bound by, and will be excused from the performance of, any obligations arising from or in connection with any Undertaking or Documentary Collection to the extent of and for the duration of the relevant prevention or hindrance.

15.2 The Indemnitees shall not be responsible or liable to you for any loss or damage arising out of any ambiguity in instructions received from you or for any delay, loss in transit, error in translation, omission, variation, damage, mutilation, interruption or other error arising in the transmission or delivery or otherwise of any message, letter, document, drafts or payments made or received by mail, email, SWIFT or otherwise in connection with any Undertaking or Documentary Collection or other communication. The Indemnitees shall also have the right to transmit the terms of any Undertaking without translating them.

## **16 Representations and Warranties**

16.1 You hereby represent and warrant to us that:

16.1.1 if you are a company, you are duly incorporated and validly existing under the laws of the place of incorporation and have the power to carry on your business as now conducted and to own your assets;

16.1.2 these Terms and Conditions constitutes valid and legally binding obligations of the Customer in accordance with its terms and the entry into and performance of your obligations under these Terms and Conditions do not and will not conflict with:

- (a) any applicable law or regulation; or
- (b) any agreement or instrument binding upon you or any of your assets; and

16.1.3 you have taken all necessary action and obtained all required or desirable consents to enable you to execute, deliver and perform your obligations under these Terms and Conditions. Any such authorisations are in full force and effect.

## **17 Documentary Credits and Standby Letters of Credit**

17.1 Each Credit may be subject to the UCP or ISP 98 as specified under the heading "Form and Communication of Undertaking."

17.2 The following terms shall apply when a Credit Request is issued or established by us as the issuing bank, in favour of a beneficiary:



- 17.2.1 any Application for a Credit shall specify such matters as we shall from time to time require in relation to the issuing of Credits but in any event shall specify such matters as are required pursuant to the UCP or ISP 98 (as applicable). We may, in our sole discretion, comply with the request contained in any Application which does not specify all such matters and, in any event, any Credit issued or confirmed pursuant to such Application shall, for the avoidance of doubt, constitute a Credit for all purposes of these Terms and Conditions;
- 17.2.2 you shall (unless we have agreed otherwise in writing or the exporter / beneficiary has arranged to effect insurance and a policy certificate has been specified in the relevant Credit Request) keep all goods which are the subject of any Credit insured under an all risks insurance policy;
- 17.2.3 these Terms and Conditions and the terms and conditions of each Credit Request shall be subject to such further or other terms and conditions which may be agreed upon in writing between the both of us in respect of any individual Credit which we may issue or establish at your request;
- 17.2.4 the beneficiaries of each Credit shall be deemed to be your agents and you shall assume all risks of their acts or omissions and the acts and omissions of any other users of the Credit and the misuse of any Credit. If the beneficiary under any Credit negotiates drafts or presents documents for payment on or prior to the date by which drafts or documents are to be negotiated or presented under such Credit or by virtue of receipt by the beneficiary of advice of the issuance of a Credit but prior to the receipt of the Credit, such negotiation or presentation shall be considered proper and shall be included under and shall be subject to the terms hereof;
- 17.2.5 in the event of any extension of time for presentation of drafts, acceptances or documents or any other modification of the terms of, or increase in the amount of, any Credit, at your request, and with or without modification or increase to any other

Credit, these Terms and Conditions and the relevant Credit Request shall be binding upon you with regard to the Credit so modified or increased and / or any action taken by an Indemnitee in accordance with such extension, modification or increase;

- 17.2.6 we are authorised to accept or, as the case may be, to pay all drafts, documents or claims purporting to be drawn or presented under any Credit provided that:
- (a) any demand by the beneficiary is received before any applicable expiry date; and
  - (b) all the conditions and documents required by the relevant Credit document have been met to our satisfaction;
- 17.2.7 we may, in our sole discretion, accept and pay, or accept upon presentation and pay at maturity, all documents presented, drafts drawn or claims for payment made in accordance with the terms of any Credit but shall not be liable in respect of any loss arising out of the rejection of any claim or documentary presentation notwithstanding any provision of the UCP or ISP 98 (as applicable) or any instruction to us from you entitling us to refrain from rejecting such claim or documentary presentation pending your waiver of any defect in the claim or documentary presentation;
- 17.2.8 we may, in our sole discretion, restrict negotiations under any Credit to an Indemnitee or office of our choice and we are authorised to accept and/or pay for your account all drafts purporting to be drawn upon any of the Indemnitees under any such Credit; and
- 17.2.9 we or any Correspondent Bank shall be entitled to possession of all documents of title and goods which are the subject of any Undertaking and, if any amount payable by you under these Terms and Conditions or any Credit Request shall not have been paid, to sell or otherwise dispose of such documents and goods and to apply their proceeds in or towards satisfaction of any such amount.

17.3 If you are the beneficiary of any Credit, we may,

in our sole discretion, agree to act as your advising bank subject to the following terms and conditions:

- 17.3.1 we shall in accordance with the section headed "Notices", advise or notify you of a Credit received by us which is issued in your favour, as well as inform you of its terms and conditions and any amendments received in relation to that Credit;
  - 17.3.2 we shall also authenticate and validate the Credit on your behalf or advise the Credit as unauthenticated;
  - 17.3.3 you will promptly provide us with any documents required from you under any Credit and we will forward the same to the relevant issuing bank on your behalf. We will review or examine the contents of any document received by us pursuant to this clause unless otherwise instructed;
  - 17.3.4 upon receipt of funds from the issuing bank, we shall remit such funds less our relevant charges or fees, as referred to in these Terms and Conditions, to a nominated account in your name; and
  - 17.3.5 if the issuing bank does not approve the documents and / or release funds pursuant to the terms of any Credit, we are under no obligation to remit such funds to you unless we have added an undertaking to honour the commitment of the issuing bank to the Credit.
- 17.4 In relation to the provision of documents under any Credit, it shall be sufficient compliance with the terms of the Credit if the documents, taken as a whole, contain the description of the goods, services or obligations as given in the Credit and appear complete and regular on their face under general scrutiny. None of the Indemnitees shall be responsible for the genuineness, correctness or form of documents or any endorsements on such documents or any misrepresentation contained in such documents as to any matter.

## **18 Guarantees, Counter-Guarantees, Bonds, Indemnities, undertakings and similar instruments**

- 18.1 Each Guarantee Instrument may at our sole discretion be subject to the URDG, as specified under the heading "Form and Communication of Undertaking."
- 18.2 The following terms shall apply when a Guarantee Request is issued or established by us as the issuing bank, in favour of a beneficiary:
- 18.2.1 any Application for a Guarantee Instrument shall specify such matters as we shall from time to time require. We may, in our sole discretion, comply with the request contained in any Application which does not specify all such matters and, in any event, any Guarantee Instrument issued pursuant to such Application shall, for the avoidance of doubt, constitute a Guarantee Instrument for all purposes of these Terms and Conditions;
- 18.2.2 these Terms and Conditions, and the terms and conditions of each Guarantee Request and each Counter Indemnity given to us, shall be subject to such further or other terms and conditions which may be agreed upon in writing between the both of us in respect of any individual Guarantee Instrument which we may open or establish at your request;
- 18.2.3 the beneficiary of each Guarantee Instrument shall be deemed to be your agent and you shall assume all risks of the acts or omissions of the beneficiary and the acts and omissions of any other users of the Guarantee Instrument and the misuse of any Guarantee Instrument.
- 18.2.4 we may, in our sole discretion, accept and pay all claims for payment including claims involving a presentation of documents which we deem have been made substantially in accordance with the terms of any Guarantee Instrument (and you shall be irrevocably bound to reimburse such payment to us in accordance with these Terms and Conditions and the terms of the Counter Indemnity given to us) but we shall not be liable in respect of any loss to any party arising out of the rejection by us of any such claim notwithstanding any instruction to us from you entitling us to refrain from rejecting

- such claim or documentary presentation;
- 18.2.5 in the event of any extension of time for presentation of documents or any other modification of the terms of or increase in the amount of any Guarantee Instrument, at your request, and with or without modification or increase to any other Guarantee Instrument, these Terms and Conditions and the relevant Guarantee Instrument and the relevant Counter Indemnity to us shall be binding upon you with regard to the Guarantee Instrument so modified or increased and / or any action taken by an Indemnitee in accordance with such extension, modification or increase;
- 18.2.6 you agree to promptly complete and return to us our standard form guarantee indemnity prior to, or immediately subsequent to, each Guarantee Instrument being issued by us;
- 18.2.7 we or any Correspondent Bank shall be entitled to possession of all documents of title and goods (if any) which are the subject of any Guarantee Instrument and, if any amount payable by you under these Terms and Conditions, any Guarantee Request or any Counter Indemnity to us shall not have been paid, to sell or otherwise dispose of such documents and goods and to apply their proceeds in or towards satisfaction of any such amount.
- 18.3 If you are the beneficiary of any Guarantee Instrument, we may, in our sole discretion, agree to act as your advising bank subject to the following terms and conditions:
- 18.3.1 we shall in accordance with the section headed "Notices", advise or notify you of a Guarantee Instrument received by us which is issued in your favour, as well as inform you of its terms and conditions and any amendments received in relation to that Guarantee Instrument;
- 18.3.2 we shall also authenticate and validate the Guarantee Instrument on your behalf or advise the Guarantee Instrument as unauthenticated;
- 18.3.3 upon receipt of a valid claim from you, we shall claim from the issuing bank payment of

- monies due to you under a Guarantee Instrument;
- 18.3.4 upon receipt of funds from the issuing bank, we shall remit such funds less our relevant charges or fees, as referred to in these Terms and Conditions, to a nominated account in your name; and
- 18.3.5 if the issuing bank does not release funds pursuant to the terms of any Guarantee Instrument, we are under no obligation to remit such funds to you.
- 18.4 In relation to the tender of documents under any Guarantee Instrument, it shall be a sufficient and proper compliance with the terms of that Guarantee Instrument if the documents purport to be in order and, taken as a whole, contain the description of the goods, services or obligations as given in the Guarantee Instrument and further appear complete and regular on their face under general scrutiny. None of the Indemnitees shall be responsible for the genuineness, correctness or form of documents or any endorsements on or any misrepresentation in such documents as to any matter.

## 19 Documentary Collections

- 19.1 Notwithstanding anything to the contrary that may be expressed in or implied by these Terms and Conditions:
- 19.1.1 nothing in these Terms and Conditions shall oblige us to handle or process Documentary Collection; and
- 19.1.2 each collection shall be subject to the URC and to the rules and regulations of and the laws applicable to the Indemnitees.
- 19.2 In the event that Collection Documents are presented to us by your seller's bank (the "**Remitting Bank**") along with instructions for obtaining payment from you, the following terms will apply:
- 19.2.1 settlement will only be effected if we have your written authority to debit your bank account;
- 19.2.2 the Collection Documents will not be released to you unless we have been

granted the authority to debit your bank account and you have sufficient funds for us to do so or we are in receipt of a bill exchange signed and accepted by an Authorised Signatory;

19.2.3 we are not instructed or required to review or examine the contents of the Collection Documents received on your behalf; and

19.2.4 you agree that we are not liable for any loss suffered as a result of following instructions of the Remitting Bank and that any conflicting instructions from you must be referred back to the Remitting Bank.

19.3 In the event that Collection Documents are sent by us, as instructed by you, to your buyer's bank (the "**Collecting Bank**") along with instructions for obtaining payment from them on your behalf, the following terms will apply:

19.3.1 you will use our standard collection form when sending the Collection Documents and instructions for obtaining payment to us or an alternative hard copy or electronic form or otherwise as may be agreed by us;

19.3.2 we may, in our sole discretion, decide to send the Collection Documents and instructions for obtaining payment through a Correspondent Bank and all relevant terms relating to Correspondent Banks as set out in these Terms and Conditions will apply here;

19.3.3 we are not instructed or required to review or examine the contents of the Collection Documents sent on your behalf;

19.3.4 we will not be liable for any loss suffered by you as a result of any delay in payment being received from the Collecting Bank; and

19.3.5 upon receipt of funds from the Collecting Bank, we shall remit such funds less our relevant charges or fees, as referred to in these Terms and Conditions, to a nominated account in your name.

19.4 If facilities are made or agreed to be made available by us for or against or in respect of any bill, draft or document on which you request us to make any collection, such facilities shall be treated as provisional and subject to and conditional upon collection and receipt by us of full payment of such bill, draft or document, notwithstanding any

form of or lack of endorsement on any such instrument and that credit given for any such instrument is withdrawn.

- 19.5 All items not payable at our office are sent to us for transmission at your sole risk and may be transmitted by mail or other means, directly or circuitously (through any of the Indemnitees or any agent of the payee, maker or paying agent) to the payor for payment or acceptance.
- 19.6 Subject to the first clause under the heading “Limitation of our Liability to You”, in receiving any items for collection we assume no responsibility beyond the duty to exercise reasonable care.

## 20 Letters of Indemnity

In the event that we shall, at your request, countersign any letter of indemnity or letter of guarantee to any third party for taking delivery of goods (to which you claim to be entitled) without production of the relevant bills(s) of lading or other documents(s) of title, airway bills or any other document(s) relating to or representing goods (“**Letter of Indemnity**”), you hereby agree that the following terms shall apply in respect of every such Letter of Indemnity:

- 20.1 We are hereby authorised to honour by acceptance and/or by payment any draft drawn under the relevant Credit and/or documents relating to goods, notwithstanding the absence of required accompanying documents or any defects in accompanying documents and even if such goods or any part thereof are unacceptable to you for any reasons whatsoever, including those outlined under the heading “Limitation of our Liability to You” of these Terms and Conditions;
- 20.2 You shall at all times keep us indemnified against all actions, proceedings, liability, claims, damages, costs and expenses and against all payments whatsoever which may be made by us in relation to or arising out of our countersigning any such Letter of Indemnity or honouring such draft or document;
- 20.3 You shall use best endeavours to obtain the bill(s) of lading or other document(s) of title to such goods or any other document(s) relating to or representing goods and, on their receipt, procure our release from our indemnity or guarantee and return the



- relevant Letter of Indemnity to us for cancellation;
- 20.4 You shall pay us a commission at such rate as may from time to time be charged by us during the currency of such Letter of Indemnity;
- 20.5 You shall remain liable to us under these Terms and Conditions so long as we are still under any liability under any such Letter of Indemnity signed by us.

## 21 Notices

- 21.1 All notices, demands and other communications under these Terms and Conditions shall be in writing and may be delivered personally or by letter or by email dispatched to us or you, as the case may be, to our or your respective registered office for the time being or to such other address and/or email address as may be notified by either party to the other from time to time for such purpose.
- 21.2 Unless otherwise provided in these Terms and Conditions, notice required to be given by us to you shall be given, at our option:
- 21.2.1 by post, by telephone, or by electronic mail to the postal address, telephone number or electronic mail address that you notify to us in the Application form you complete for the Undertaking; or
- 21.2.2 by advertisement published in at least one national daily newspaper.
- 21.3 Any notice or other communication given by us shall be deemed to have been received:
- 21.3.1 within 48 hours of its sending by post;
- 21.3.2 at the time of its communication in the case of notice by telephone;
- 21.3.3 at the time of its being sent in the case of notice by electronic mail;
- 21.3.4 at the date of actual delivery in case of notice delivered by hand;
- 21.3.5 48 hours after the date of it being published in the case of notice by newspaper; or
- 21.3.6 at the time that it is published on the Website in the case of a notice given by that means.
- 21.4 A notice given as described above on a day which is not a Business Day (or after normal business hours in the place of receipt) shall be deemed to have been received on the next Business Day.
- 21.5 Any notice to be served on us shall be effective only

when actually received by us. A notice shall be deemed to have been received by us, in the case of notice by electronic mail, when received into the Bank's information system within the meaning of the term as defined in the Electronic Commerce Act 2000.

## **22 Successors and Assigns**

- 22.1 We may assign, charge, transfer (by way of novation, securitisation or otherwise) or sub-participate all or part of our rights and obligations under these Terms and Conditions to another bank or financial institution or any third party, in Ireland or elsewhere, without your consent.
- 22.2 If we transfer any of our liability under any Undertaking to a third party, we shall notify you thereof whereupon we may transfer to such third party any rights under these Terms and Conditions relating to such transferred liability.
- 22.3 We may disclose to any of our Affiliates and any other person such information about you as we consider appropriate.
- 22.4 These Terms and Conditions shall be binding on you and your successors but you may not assign or transfer any of your rights or obligations under these Terms and Conditions.

## **23 Variations**

We reserve the right to alter these Terms and Conditions at any time. To the extent permitted by law, any such alteration shall be effective and binding after one calendar month of the date of the notice of such alteration being issued to you unless longer notice is required by applicable law (unless otherwise specified by us in the notice), or on your subsequent requests for an Undertaking to be issued or for a Documentary Collection to be handled or processed, if earlier.

## **24 Continuing Agreement**

- 24.1 These Terms and Conditions, and any subsequent revisions, amendments or replacements thereof, are continuing and shall remain in full force and effect until we notify you by writing that they are no longer in force.

## **25 Miscellaneous**

- 25.1 Our statement as to any amount payable under these Terms and Conditions shall be conclusive, except in the case of manifest error.
- 25.2 Rights and remedies under these Terms and Conditions may be exercised more than once and are cumulative and not exclusive of any rights or remedies provided by law. Any waiver by us of a breach or default of any of these Terms and Conditions shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on our part to exercise or avail of any right, power or privilege that we have or may have, operate as a waiver of that breach or default by you.
- 25.3 If any of the provisions of these Terms and Conditions are held by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity and enforceability of the remainder of the provision in question and of other provisions shall not be affected by that provision but shall continue in full force and effect.
- 25.4 Notwithstanding any other provision in these Terms and Conditions, we may take whatever action we consider appropriate to meet our obligations, either in Ireland or elsewhere in the world, relating to the prevention of fraud, money laundering or terrorism and to the provision of financial and other services to persons who may be subject to sanctions. This action may include, but is not limited to, investigating and intercepting payments into and out of the Account and making enquiries to establish whether a person is subject to sanctions. This may result in a delay or failure to execute instructions received from you or in the receipt of cleared funds. You acknowledge and agree that, to the extent permitted by law, we shall not be liable for any loss, damage or other liability suffered by you or any third party which arises as a result of taking such action.
- 25.5 The Belgium based Society for Worldwide Interbank Financial Telecommunications (SWIFT) processes payments on behalf of financial services providers worldwide and is currently the only organisation providing such a service. All transactions processed in Belgium are replicated in a back-up system (known as a 'mirror site') in the United States of America (US). Maintaining a geographically separated back-up infrastructure to ensure continued operation is in line with international

standards and supervisory requirements. On foot of official subpoenas, transaction data held in the US 'mirror site' may be disclosed to US or other authorities for the purposes of combating terrorism and other serious crimes. Therefore, by instructing us to execute a payment instruction, any information you provide to us in order to effect a payment instruction could potentially be disclosed to the US authorities. We reserve the right to amend this notice at any time. You should regularly check for any amendments.

- 25.6 We may appoint third parties to perform any of our obligations or ancillary services to you and/or as our nominee, agent, lawyer or attorney.

## **26 Law and Jurisdiction**

- 26.1 These Terms and Conditions shall be governed by, and construed in accordance with, Irish law.
- 26.2 The courts of Ireland have exclusive jurisdiction over any claim or dispute arising out of or in connection with these Terms and Conditions. Nothing in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 26.3 If you are incorporated or registered or reside outside the Republic of Ireland, you agree to irrevocably appoint an agent for service of process in relation to any proceedings before the Irish courts in connection with these Terms and Conditions and undertake to immediately notify us of their details and keep us updated on any changes to their details. If that agent fails to notify you of the process, the proceedings will remain valid. If you fail to appoint an agent under this clause, we may as your attorney appoint an agent on your behalf and at your expense.

## **27 Data Protection**

For information in relation to how we collect personal information about you, how we use it and how you can interact with us about it, see our data protection notice in branches and online. It may change from time to time.







