

Import Documentary Credits.

Terms and Conditions.



The terms and conditions set out in this document apply in respect to any Import Documentary Credit ("**Credit**") Application from the Customer and subsequently issued by Bank of Melbourne – A Division of Westpac Banking Corporation ABN 33 007 457 141 AFSL 233714 ACL 233714 (the "**Bank**").

1. ICC Rules.

The Credit is issued subject to the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits and the International Chamber of Commerce Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits in each case, current at the time of issuance.

2. Irrevocable.

- 2.1 A Credit is irrevocable. Subject to this clause, it cannot be cancelled or altered without the written agreement of all relevant parties.
- 2.2 The Bank may make alterations to the Customer's requested wording or other information contained in the Credit, including altering the requested Advising and/or Negotiating Bank, if in the Bank's opinion, such alterations will clarify, correct or otherwise improve the wording of or other information contained in the Credit.

3. Goods and Documents.

- 3.1 The Customer agrees that:
 - (a) all goods or produce the subject of the Credit (the "**Goods**"); and
 - (b) all documents of title, insurance policies or other documents representing or relating to the Goods (the "**Documents**")

now or at any time delivered to or deposited with the Bank have been or will be so delivered or deposited by way of pledge as security for payment on demand to the Bank of all sums of money which now or at any time may become due or owing or may be accruing or become due to the Bank by the Customer together with, in all cases, interest,

on a full indemnity basis, incurred in relation to this security or the enforcement of it (the "**Secured Indebtedness**") and so that interest shall be computed (after as well as before any demand or judgement) according to the usual mode of the Bank in dealing with current accounts.

4. Customer's liability in respect of the Credit.

- 4.1 The Customer must pay to the Bank:
 - (a) all amounts paid by the Bank under the Credit on the day on which the Bank makes or is required to make that payment; and
 - (b) all commissions, fees, charges, interest on overdue payments and expenses (incurred or to be incurred) under or in connection with the Credit.
- 4.2 If any amount payable by the Bank under the Credit is payable in a currency (the "**Payment Currency**") other than the currency of the Customer's account from which the Bank is entitled to debit that payment (the "**Account Currency**"), then:
 - (a) the Bank will make the payment in the Payment Currency; and
 - (b) the Customer must pay to the Bank an equivalent amount in the Account Currency, determined on the basis of the Bank's ruling selling rate of exchange at the time the Bank is required to make the payment in the Payment Currency or at a rate pre-arranged between the Bank and the Customer by way of a forward exchange contract.
- 4.3 The Customer indemnifies the Bank against, and must pay the Bank on demand the amount of, all direct losses, damages, liabilities, reasonable costs, taxes and expenses (including legal expenses on a full indemnity basis) incurred by the Bank in connection with the Credit, including (but not limited to):
 - (a) in relation to any claim that is made or attempted to be made under the Credit; or
 - (b) the Bank acting on any representations made by the Customer to the Bank relating to this Credit; or

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- (c) any failure or refusal on the part of the Bank to honour this Credit because of a court order or other similar obligation, or because the bank is of the view that a transaction to which this Credit relates is tainted by fraud (except to the extent that loss, damage, liability, cost, tax or expense was caused by the negligence, fraud or wilful misconduct on the part of the Bank).

This indemnity shall survive termination or expiration of the Credit.

- 4.4 If the Customer takes delivery of the Goods before advice of negotiation or presentation of drafts or documents, the Customer must pay to the Bank, on demand, an amount equal to the equivalent of the full invoice value of those Goods.

5. Responsibility and liability.

- 5.1 All instructions and correspondence relating to the Credit will be sent at the Customer's risk and the Bank is not responsible for any omissions, errors or delays on the part of postal or teletransmission companies or authorities.
- 5.2 The Customer must comply with all laws, and pay all charges, duties and taxes relating to the Goods and the export or import of Goods as well as freight and other amounts payable under any contract of carriage. The Customer indemnifies the Bank in respect of any costs or liabilities that may arise as a consequence of the importation of the Goods which may be prohibited by law from import into the country of destination.
- 5.3 Neither the Bank or any other bank relating to the Credit are responsible:
 - (a) for the genuineness, correctness or validity of the drafts or of any of the documents received by it;
 - (b) in respect of any misrepresentation or breach of condition or warranty by any person as to the description, quantity, quality or value of the Goods;
 - (c) for any detention, loss of, or damage to, the Goods;
 - (d) for the shippers' charges on the Goods; or
 - (e) for any variations in the instructions agreed to by the Bank or any other bank relating to the Credit necessitated by the law and/or commercial practice of the country in which any draft is negotiated or presented for acceptance or for payment.

6. Making payments under the Credit.

- 6.1 The Bank is entitled to pay any amount under the Credit that it believes in good faith to have been properly demanded under the Credit.
- 6.2 The Customer acknowledges that the Credit is by its nature a separate transaction from any contract between the Customer and any other party on which the Credit may be based. As such, the Customer acknowledges that the Bank is not obliged to notify the Customer prior to making a payment or accepting drafts, claims or drawings under the Credit. The Customer further acknowledges that the Bank is entitled to make any payment or accept any draft, claim or drawing under the Credit if it determines that the Documents comply with the terms of the Credit notwithstanding notice from the Customer of any claim or defence the Customer may have against the beneficiary of the Credit.
- 6.3 If the Bank determines that any Documents do not appear on their face to be in compliance with the terms and conditions of the Credit, the Bank may refuse the Documents by notice to the Negotiating Bank or Nominated Bank. The Customer acknowledges that the Bank is not obliged to notify the Customer of any such determination or refusal or to seek the Customer's waiver of any discrepancies before refusing the Documents. The Customer further acknowledges that any decision by the Bank to seek a waiver at any time does not oblige the Bank to seek a waiver at any other time in respect of any other discrepancies.
- 6.4 The Customer agrees that the Bank is entitled, at its discretion and at the Customer's cost:
 - (a) to request any Negotiating Bank to notify the Bank by teletransmission or other expeditious means, of the amount negotiated; and
 - (b) to pay such amount under the Credit on receipt of such notice.
- 6.5 If the Customer requests the Bank to authorise release or delivery of the Goods to the Customer, the Customer agrees that the Bank may treat such a release as if it was a payment made by the Bank under the Credit.
- 6.6 The Customer acknowledges that the Bank may disclose information about the Customer to any person making a claim under the Credit.

7. Funding.

- 7.1 The Customer authorises the Bank, without prior notice, to debit at any time from any account held by the Customer with the Bank:
- (a) all amounts paid by the Bank under the Credit on the day on which the Bank makes or is required to make that payment; and
 - (b) all commissions, fees, charges, interest on overdue payments and expenses (incurred or to be incurred) under or in connection with the Credit, as and when incurred.
- 7.2 The Customer must ensure that sufficient funds are available in the Customer's accounts held with the Bank (either as available credit funds or as approved or available overdraft funds) so that the debits authorised under this clause can be made on time.
8. If at the time there are insufficient funds available in the Customer's accounts held with the Bank to allow the debits authorised under this clause to be made on time, the Customer:
- (a) authorises the Bank to advance the Customer an amount equal to any shortfall; and
 - (b) agrees to pay interest on the amount so advanced from (and including) the day on which the advance is made to (but excluding) the day on which that amount is paid (plus accrued interest) in full, at the current interest rate applicable to such advances.

9. Remedy on default.

If the Customer fails to observe any of its obligations in respect of the Credit, the Bank may, without notice to the Customer (and without prejudice to any of its other rights and remedies), cause the Goods (or any part thereof) to be landed, stored, insured and/or sold (or sold without landing) or otherwise disposed of on such terms and for such consideration, as the Bank considers appropriate, in which circumstance:

- (a) the Bank is not liable for any loss suffered by the Customer as a consequence of such action;
- (b) the Customer must pay to the Bank, on demand, an amount equal to:
 - (i) the Customer's liability to the Bank in respect of the Credit; and

- (ii) the costs and expenses incurred by the Bank in respect of any actual or attempted landing, storage, insurance, sale or disposal of the Goods, less the net proceeds (if any) of any sale or disposal of the Goods; and
- (c) the Customer must do any thing which includes endorse, assign, sign, execute and deliver any transfers, deeds or documents (or arrange any such matters) which the Bank requires in order to perfect the Bank's title to the Goods or to otherwise give effect to any proposed landing, storage, insurance, sale or other disposal.

10. Tax Reporting Obligations.

We are required under domestic and international laws to collect and report financial and account information relating to individuals and organisations who are, or may be, foreign tax residents. We may ask you whether you or any shareholder, beneficiary, settlor or controlling person are a foreign tax resident from time to time, such as when you open an account with us, or if your circumstances change. If you do not provide this information to us, including information about the foreign tax identification number for all countries you or any shareholder, beneficiary, settlor or controlling person are a foreign tax resident of, we may be required to limit the services we provide to you. This could include not opening your Product, or limiting functions or services of your Product, or closing it.

Unless you tell us otherwise, by completing any application for products covered by these terms and conditions, you certify that you, any shareholder, named beneficiary, settlor or controlling person is not a foreign tax resident. You must tell us if you, or any shareholder, named beneficiary, settlor or controlling person is, or becomes, a foreign tax resident (unless an exemption applies, such as for shareholders of listed companies). Where there are no named beneficiaries (e.g. for beneficiaries identified only as a class) you must tell us if a beneficiary is a foreign tax resident immediately when any decision is made to identify such beneficiary and, in any case, before such distribution is to be made to them. You may contact us to provide foreign tax residence information by calling 1300 725 863. We cannot give tax advice, so please contact your independent tax advisor if you need help finding out whether any person is a foreign tax resident.

11. Sanctions/Anti-Money Laundering and Counter-Terrorism Financing Obligations.

Please be advised that in order for the Bank to meet its regulatory and compliance obligations relating to anti-money laundering, counter-terrorism financing and economic and trade sanctions, the Bank will be increasing the levels of control and monitoring it performs.

The Customer should be aware that:

- transactions may be delayed, blocked or refused where the Bank has reasonable grounds to believe that they breach Australian or international law or sanctions, or where the Bank needs to obtain further information to assist its compliance process;
- where transactions are delayed, blocked, frozen or refused, the Bank and its correspondents are not liable for any loss the Customer suffers (including consequential loss); and
- the Customer must not initiate or conduct a transaction that may be in breach of Australian or international law or sanctions.

The Customer should also be aware that:

- the Bank may from time to time require additional information from the Customer to assist the Bank in its compliance process; and
- where legally obliged to do so, the Bank will disclose the information gathered to regulatory and/or law enforcement agencies, other banks, subcontractors, other members of the Westpac Group, service providers or to other third parties.

The Customer provides the Bank with the following undertakings and indemnifies the Bank against any losses arising from any breach by the Customer of such undertakings:

1. the Customer will not initiate, engage in or effect a transaction that may be in breach of Australian law or sanctions (or the law or sanctions of any other country); and
2. any activity underlying any transaction does not breach any Australian law or sanctions (or the law or sanctions of any other country).

12. Privacy Obligations.

To the extent that it applies to you, you must comply with the *Privacy Act 1988* (Cth) in relation to any personal information you provide to us in connection with these Terms and Conditions, and if you engage in activities in a jurisdiction other than Australia, you must comply also with the applicable privacy laws in that jurisdiction.

13. External service providers.

The Bank may subcontract any of its rights and obligations to another person in Australia or overseas.

The Bank may disclose or share any information you provide to us with any such person. With respect to any personal information, details of the countries where the overseas recipients are likely to be located is contained in our Privacy Statement which is available at bankofmelbourne.com.au/privacy/privacy-statement (as updated from time to time).

Accessibility support.

At any time, you can inform us how you would prefer to be contacted. If you are deaf and/or find it hard hearing or speaking with people who use a phone, you can reach us through the National Relay Service (NRS). To use the NRS you can register by visiting accesshub.gov.au/about-the-nrs

Visit bankofmelbourne.com.au/accessibility for further information on our accessible products and services for people with disability.