



TRADE FINANCE

PŪTEA TAUHOKOHOKO

Trade Terms & Conditions

Effective 25 November 2024

As part of our identity, Kiwibank worked with multi-disciplinary Māori artist Tristan Marler (Manawa Tapu) to design a set of **tohu** (cultural motifs or symbols) that represent attributes of our brand and of a thriving community.

Kia Manaaki - Show Heart and uses the Pātiki tohu. Pātiki communicates balance between people and environment to produce a thriving, resilient community that can manaaki, or care, for others.

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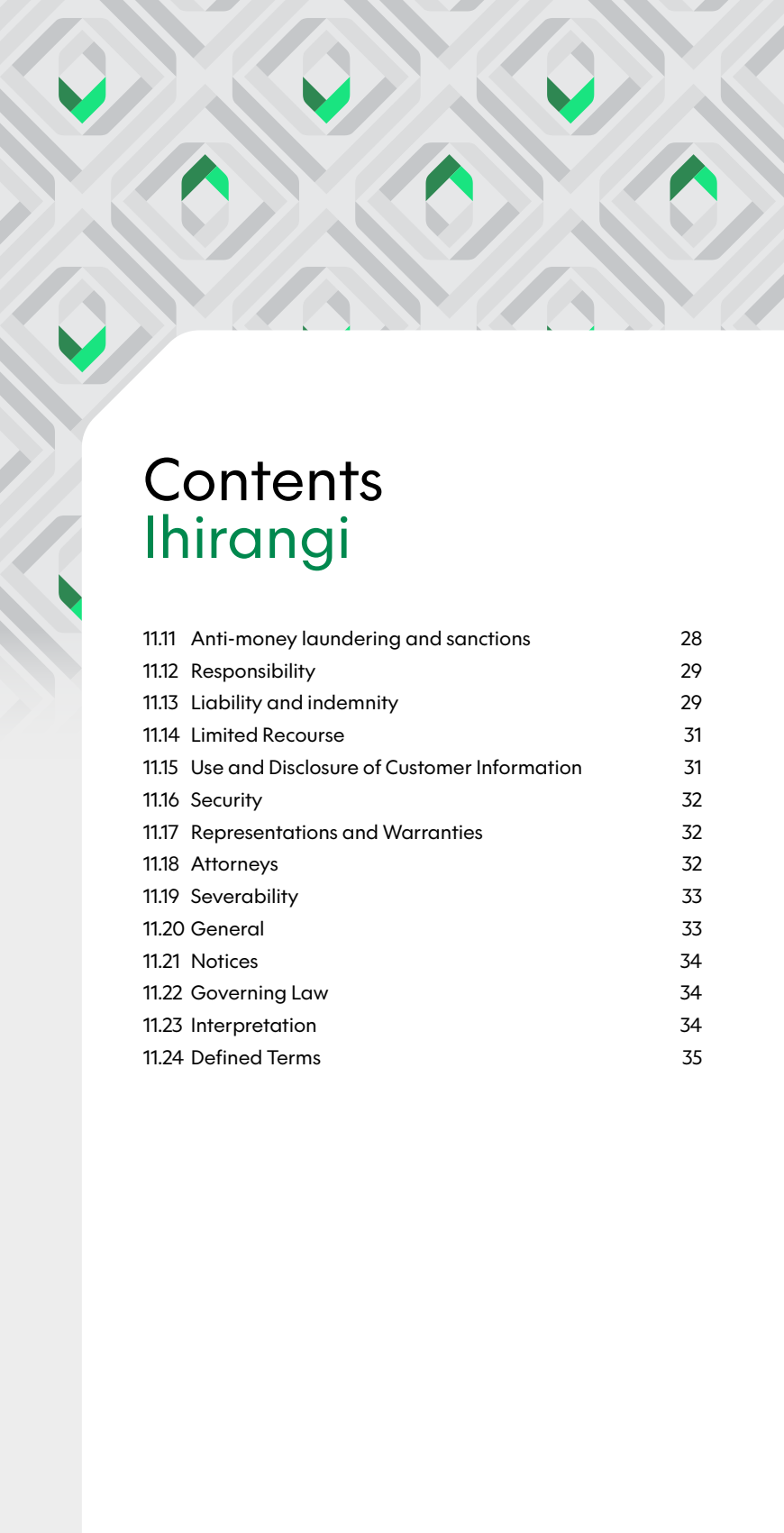
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Trade Terms & Conditions



Effective 25 November 2024

1. Introduction

1.1 Relevant Terms

These **Terms** shall apply to any **Trade Products or Services** provided by us to you from time to time where the application form or any other **Trade Finance Document** in connection with such **Trade Products or Services** explicitly incorporates these **Terms**, in addition to any further terms and conditions set out in any **Trade Finance Document**.

1.2 Applications

- (a) If you want us to provide a **Trade Product or Service** to you, you must deliver to us an application or other instructions acceptable to us, in the form we specify from time to time, together with any other documents we require. All documents must be properly completed, and signed by one or more of your authorised officers.
- (b) We are not obliged to make, or continue to make, any **Trade Product or Service** available to you, and may accept or reject any application at our discretion. We do not have to provide you with any reason for refusing to make or continue to make any **Trade Product or Service** available to you, or for refusing to accept and act upon any application.

1.3 International Chamber of Commerce Rules

- (a) Unless specified otherwise in the relevant application or instrument, each **Credit** will be subject to the **UCP** and the **ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits**.
- (b) Each **Collection** will be subject to the **ICC Uniform Rules for Collections**.
- (c) Each standby letter of credit we issue will be subject to the **ISP** or **UCP** as specified in the relevant application or instrument.

- (d) Each demand guarantee, bond or payment undertaking we issue will be subject to the **ISP** or the **ICC** Uniform Rules for Demand Guarantees, in each case as specified in the relevant application or instrument.
- (e) Each **Trade Product or Service** that is subject to **UCP** is also subject to **ISBP**.
- (f) Unless we notify you otherwise, the **ICC** rules which are applicable to each **Credit, Standby Instrument or Collection** will be those which are in effect at the relevant time, and any future revision of such rules will automatically apply when it is stated by the **ICC** to come into effect.

1.4 Warning – Exchange Rate Movements

- (a) You acknowledge that (i) using a **Trade Product or Service** in one currency where amounts you pay or are paid are in another currency exposes you to exchange rate risk and (ii) the decision to take the risks of using a **Trade Product or Service** has been made solely by you without any influence, encouragement or advice from us (other than advice as to the availability of any facility for use by you for your purposes) and in reliance on your judgement and your professional advisors (other than us and our personnel).

2. Import Credits and Import Collections

2.1 Application of Provisions

The terms in this clause 2 apply to **Import Credits** and **Import Collections**.

2.2 Issue of Import Credits

- (a) Each **Import Credit** we issue will be an irrevocable transaction, separate from any contract or other arrangement between you and any other person in relation to that **Import Credit**. We will satisfy our obligations under the **Import Credit** issued by us, irrespective of any instructions from you to the contrary.
- (b) It is solely your responsibility to ensure that the terms and conditions (and any applicable requirements) of an **Import Credit** are effective, enforceable and satisfactory to you. We have no responsibility to advise you on any such issues.

- (c) We may, at our discretion, restrict **Negotiations** under any **Import Credit** to our own offices or to any **Correspondent Bank** we choose.
- (d) If there are any issues relating to the terms of the **Import Credit** (including whether it conforms to any application), you must notify us within 2 **Business Days** after receiving your copy of the **Import Credit** or you will be deemed to have accepted the terms of the **Import Credit** and waived any rights to raise any issues in connection with that **Import Credit**.

2.3 Claims under Import Credits

- (a) If we believe the **Documents** comply with the terms of the **Import Credit** and there is otherwise a **Complying Presentation**, we may make any payment or accept any **Bill of Exchange** under the **Import Credit** without notifying you before payment or acceptance or making any further enquiry, and notwithstanding any notice from you not to do so.
- (b) Unless we agree otherwise in writing, you must pay us all amounts we pay under the **Import Credit** on or before the day on which we make, or are required to make, that payment.

2.4 Discrepancies in Documents

- (a) We may refuse to **Honour** any **Documents** if we believe that they do not comply with the requirements of the **Import Credit** or there is otherwise a non-**Complying Presentation**. We are not obliged to notify you if we do this.
- (b) We are not obliged to seek any waiver from you of any discrepancies before refusing the **Documents** (even if we have sought such a waiver on previous occasions). If you advise us that you are willing to give a waiver of any discrepancies in the **Documents** or non-**Complying Presentation**, you will indemnify us in respect of any payments we make and **Costs** we incur in connection with the **Import Credit**, notwithstanding the discrepancies in the **Documents** or non-**Complying Presentation**.

- (c) Irrespective of whether there is any discrepancy in relation to the **Documents** or any other non-**Complying Presentation**, if you request us to authorise the release or delivery of **Goods** drawn under an **Import Credit**, and we agree, you agree to indemnify us in respect of any **Costs** we suffer or incur in connection with the relevant **Import Credit**.

2.5 Insurance

- (a) Where the **Goods** the subject of an **Import Credit** are at your risk, you must insure the **Goods** to our satisfaction and, if we request, provide a copy of that insurance policy and all receipts.
- (b) If we determine that the insurance is not acceptable, we may, at your cost, arrange further or other insurance (including war risk) in connection with the **Goods**.

2.6 Import Collections

If we act as a **Collecting Bank** in connection with **Import Collections** and **Bills of Exchange** for acceptance or payment, or **Documents** on a cash against **Documents** or **Documents** on acceptance basis, we may hold the **Documents** until acceptance or reimbursement of the relevant **Bills of Exchange**, or payment, by you.

2.7 Trust Receipt

- (a) If we release any or all of the **Documents** to you to enable you to obtain delivery of the **Goods** prior to the payment in full of the **Secured Moneys**, you will:
- (i) only deal with the **Goods** in accordance with our instructions from time to time to protect our interests and, if required by us, you will provide us with a trust receipt on terms satisfactory to us;
 - (ii) hold the **Documents**, and the **Goods** when received, in safe custody, and exclusively for the purpose of their sale or other disposition approved by us at full market value and in the ordinary course of business; and
 - (iii) if you choose not to accept any **Documents**, you will return all **Documents** to us within 48 hours of receipt of the **Documents** from us.

- (b) Where you have obtained delivery of the **Goods** pursuant to clause 2.7(a), until sale or delivery (if applicable), you will at your cost:
- (i) warehouse the **Goods** in our name so that they are clearly distinguishable from goods of a similar nature;
 - (ii) not obliterate, alter, deface, remove or obscure any identifying numbers, plates, marks or other matter affixed to the **Goods**;
 - (iii) not permit the **Goods** to be processed or altered or incorporated into any other goods without our consent;
 - (iv) maintain the **Goods** in sellable condition;
 - (v) immediately deliver to us any warrants or receipts for the **Goods** (if issued);
 - (vi) keep all **Goods** insured with a reputable insurer at all times for their full insurable value (which we may specify) against fire and any other usual risks that a prudent owner of property of a similar type would insure, and any other risk, loss or damage of any kind that we from time to time require;
 - (vii) deliver to us the policies or certificates of insurance for all such insurance or (if we consent) copies of those policies or certificates, certified as true and correct by the relevant insurer, and if required by us confirmation that our interests have been duly noted by the insurer; and
 - (viii) in case of loss, pay the insurance moneys to us in the same manner as proceeds of sale and make good any deficiency.
- (c) Where this clause 2.7 applies (i) you have no claim, lien or set-off of any kind in respect of anything which you hold on trust for us under this clause, (ii) the **Goods** will remain our property until sold or otherwise disposed of and (iii) any proceeds of sale or other disposal paid to you in accordance with this clause may be appropriated and applied by us at our discretion.
- (d) We may demand delivery and endorsement to us of all **Documents** and exercise all your rights (if any) as unpaid seller of the **Goods**.

2.8 Avalisation

- (a) We may guarantee a **Bill of Exchange** if you request us to do so.
- (b) You must pay us the face value amount of the guaranteed **Bill of Exchange** on its maturity date.
- (c) If you do not comply with paragraph (b) above, we may charge a reasonable rate of default interest from the date on which payment was due until you pay the face value amount of the **Bill of Exchange** and any other **Costs** incurred by us arising from the dishonour.
- (d) You must indemnify us against all **Costs** incurred in guaranteeing a **Bill of Exchange** and reimburse us for such **Costs** on demand.
- (e) You irrevocably authorise us to, immediately upon demand from the beneficiary and without notice to you, pay any money demanded by the beneficiary under the guaranteed **Bill of Exchange** on the maturity date. We are not required to enquire whether any such demand is valid or properly made. You will be bound by any action we take in good faith.

2.9 Limit on our responsibilities

- (a) In addition to the disclaimer on the effectiveness of documents in the **UCP**, to the maximum extent permitted by law, neither we nor our Correspondent Banks are liable or responsible for, nor will your obligations under these **Terms** or in relation to any **Import Credit** be reduced, terminated or affected in any way adverse to us by:
 - (i) any carriers' fees in relation to the **Goods**, including for storage and landing,
 - (ii) our granting of any time, credit, indulgence or other concession to any person,
 - (iii) any failure of any person to obtain any approval or licence necessary or desirable in connection with these **Terms** or the **Import Credit**,
 - (iv) performance of the **Import Credit** or any other agreement being or becoming impossible or illegal as a result of any act, of any **Regulatory Authority**, or any **Regulation** affecting the terms of the **Import Credit**,

- (v) us or any other bank agreeing to any variations in the instructions relating to the **Import Credit** made necessary or desirable by the **Regulations** and/or commercial practice of the country in which any **Bill of Exchange** is **Negotiated** or **Presented** for acceptance or payment, or
- (vi) any other matter or thing which would otherwise affect our liability, responsibility or obligations, of us, our correspondents, our agents or you, other than our fraud, negligence or willful misconduct (and the fraud, negligence or willful misconduct of our correspondents or agents).

2.10 Our remedies

- (a) If you fail to comply with your obligations to us in connection with any **Import Credit** or **Import Collection** and where we reasonably believe that we have an obligation to a third party or we reasonably believe that we may not recover the costs of the **Goods** from you, then, without prejudice to any of our other rights and remedies, you:
 - (i) irrevocably authorise us at our discretion and without notice to you to:
 - (1) land, dock, store, transport, insure, and/or sell or otherwise dispose of any part of the relevant **Goods**, or any part of the relevant **Goods**, on such terms as we consider to be reasonable; and/or
 - (2) deal with the relevant **Documents** in any way we think reasonable, and/or
 - (3) collect any money payable under any applicable insurance policies,
 - (ii) must pay to us on demand the amount of any deficiency on such sale, dealing or insurance, and all Costs incurred by us in connection with any actual or attempted matters referred to in clause 10.2(a)(i) above; and
 - (iii) agree that we are not liable for any Costs suffered or incurred by you as a consequence of the exercise of our rights under this clause 10.2.

3. Back to Back Import Credits

3.1 Compatibility

- (a) You must ensure that a **Back to Back Credit** contains comparable terms for the related **Master Credit**.
- (b) We may notify you of any incompatibility between the **Back to Back Credit** and the **Master Credit** that we become aware of.

3.2 Amendments

- (a) If we are not the **Advising Bank** in relation to the **Master Credit**, you will promptly notify us of any proposed amendments to the **Master Credit** and will not agree to any amendment of any **Master Credit** without our prior written consent.
- (b) We may accept an amendment to the **Back to Back Credit** at our sole discretion. If we do accept an amendment, it will not take effect until we receive written consent from all other relevant parties to the **Back to Back Credit**.

3.3 Full Recourse

Your liability under the **Back to Back Credit** is not dependent upon whether payment can be obtained under the **Master Credit** and we will have full recourse to you in respect of that liability.

3.4 No Warranties or Representations

No payment made by us under a **Back to Back Credit** will constitute any warranty or representation by us that the **Trade Finance Document(s)** received by us under the **Back to Back Credit** are sufficient to form a set of fully compliant **Trade Finance Document(s)** under the **Master Credit**.

3.5 Assignment

You will not assign the proceeds of any **Master Credit** to any other person without our prior written consent.

3.6 Presenting Bank

- (a) You irrevocably appoint us as your presenting bank regarding the **Master Credit**.
- (b) After the **Trade Finance Document(s)** are **Presented** under the **Back to Back Credit**, on demand by us, you must deliver to us any document required to facilitate a **Complying Presentation** under the **Master Credit**.
- (c) We may take any action in respect of the **Master Credit**, including obtaining payment under the **Master Credit**.
- (d) We may apply the proceeds relating to the **Master Credit** to:
 - (i) Pay the corresponding drawing under the **Back to Back Credit** irrespective of any discrepancies in any document presented under the **Back to Back Credit**; or
 - (ii) Discharge your obligations and liabilities (actual or contingent) in respect of any advance or loan provided by us in connection with the **Back to Back Credit** as we see fit,

in each case without first crediting those proceeds to your account with us.

3.7 Authority

- (a) You authorise us to: (i) execute, sign and/or complete any document, instrument or instruction and (ii) do any acts which in our opinion are necessary for the **Presentation** of the **Trade Finance Document(s)** under the **Master Credit**.
- (b) After the **Trade Finance Document(s)** are **Presented** under the **Back to Back Credit**, on demand by us, you must deliver to us any document required to facilitate a **Complying Presentation** under the **Master Credit**.

4. Export Credits and Export Collections

4.1 Application of Provisions

The terms in this clause 4 apply to **Export Collections** and **Export Credits**.

4.2 Export Credits

- (a) You may request us to (but we are not obliged to) (i) **Honour or Negotiate Documents** and pay proceeds to your specified account immediately or upon acceptance of the **Documents** by the **Issuing Bank** or (ii) without **Honour or Negotiation, Present Documents** to the **Issuing Bank** or **Reimbursing Bank** for payment, and pay proceeds to you only when we receive payment from the **Issuing Bank** or **Reimbursing Bank**.
- (b) You must provide us with all **Documents** required under the **Export Credit**, including a duly completed **Export Credit** lodgement authority and, if we are not the **Advising Bank**, the originals of the **Export Credit** and all amendments to it.
- (c) We or our **Correspondent Bank** may notify you of any discrepancy we identify in connection with the **Documents** to be **Presented** under the **Export Credit**.
- (d) You are responsible for all **Costs** incurred by us in connection with any **Honour, Negotiation or Presentation** of **Documents** under this clause 4 (regardless of whether or not the **Presentation** is **Honoured** by the **Issuing Bank**). We may deduct the amount of such **Costs** from any payment we receive from the **Issuing Bank** or require payment from you on demand.

4.3 Export Collections

- (a) You may request us to (but we are not obliged to) **Negotiate a Bill of Exchange** or provide advances against the **Documents** to be sent on **Collection**.
- (b) You must provide us with a duly completed **Collections** lodgement authority, together with all **Documents** that are required to be sent for **Collection** pursuant to the **Collections** lodgement authority.
- (c) We will not check the **Documents** before sending them to the **Collecting Bank**.
- (d) We will only pay you proceeds of a **Collection** which have actually been received by us in cleared funds from the **Collecting Bank**.

4.4 Negotiation and/or advances against Documents

- (a) You warrant and represent to us that all **Documents** delivered or to be delivered to us for **Negotiation** and/or **Presentation** or **Collection** relate to sale of the **Goods** or the provision of **Services** as described in those **Documents** and you have shipped or delivered the **Goods** to, or fully performed the **Services** for, the buyer.
- (b) You are responsible for all **Costs** incurred by us in relation to the **Negotiation** and/or **Presentation** of **Documents**, the **Collection** or any advance against **Documents** sent on **Collection**. We may deduct the amount of such Costs from the proceeds before payment to you or require payment from you on demand.
- (c) Unless otherwise agreed in writing, we have full recourse to you and you will pay the following amounts on demand and in any event not later than the maturity date of the relevant **Document**:
 - (i) all amounts required to reimburse us for any advances by way of discounting or financing a drawing under the **Export Credit** or providing an advance against **Documents** presented for payment under the **Export Credit** or sent on **Collection** (including purchase, discounting, **Honour**, **Negotiation** or financing of any **Bills of Exchange**, drafts or **Documents**) (each an **Advance**) which have not been duly **Honoured** on **Presentation** or in respect of which payment has not been duly made to us on the maturity date for any reason;
 - (ii) interest on each **Advance**, at an interest rate determined by us, for the period from the date the Advance is made to the date the Advance is repaid in full. We may deduct the amount of such interest from any payment we receive from the **Issuing Bank** or **Collecting Bank** (as applicable).
- (d) Nothing that we do or omit to do in respect of any **Documents** we **Negotiate** for you after being dishonoured for payment or acceptance or not duly taken up on **Presentation** will in any way prejudice our right of full recourse or, if otherwise agreed, limited recourse to you.

- (e) We or our agents may, at our discretion and on such terms as we see fit, in relation to any **Bill of Exchange** or draft we have **Negotiated** (i) take conditional acceptances or acceptances for Honour and extend the due date for payment, (ii) accept payment from the drawee or acceptor before maturity in whole or under rebate or discount, (iii) accept part payment before maturity and deliver a proportionate part of the **Goods** to the drawee or acceptor of the **Bill of Exchange** or draft or consignee of the **Goods**, (iv) at the request of the drawee, delay **Presentation** of the bill for payment or acceptance without affecting your liability to us in respect of such **Bill of Exchange** or draft, and (v) we may institute proceedings and take steps for recovery from any acceptor or endorser of the **Bill of Exchange** or any amount due in respect of it, irrespective of whether we have debited your account with the amount of such **Bill of Exchange** or draft.

4.5 Liability in connection with Export Credits and Export Collections

We are not responsible for, and you release us from all liability in respect of, any loss you may suffer as a result of:

- (i) any act, omission or default on the part of any **Collecting Bank** or **Issuing Bank** (as applicable), including any failure to make payment or any release of the **Documents** prior to making payment;
- (ii) any discrepancy or deficiency in any **Documents** that we send on **Collection** or **Present** under an **Export Credit**;
- (iii) the seizure of any payment by a foreign regulatory body.

5. Confirmation of Export Credits

5.1 Application of Provisions

The terms in this clause 5 apply to a **Confirmation** of an **Export Credit**.

5.2 Confirmation

- (a) We may **Confirm** an **Export Credit** if both you and the **Issuing Bank** request us to do so.

- (b) If the **Issuing Bank** does not request or allow us to **Confirm** an **Export Credit**, you may still request us to **Confirm** that **Export Credit**. We are not obliged to accept your request and will only do so if all elements relating to the **Export Credit** are satisfactory to us in our absolute discretion and you agree to satisfy any conditions we advise to you.
- (c) You must provide us with any documents and other information we require for us to assess the request, including a complete original **Export Credit** (and all amendments).
- (d) We will only add our **Confirmation** to an **Export Credit** which is subject to the **UCP** and has us as the **Nominated Bank** or otherwise is freely negotiable with any bank and in respect of which the other terms of the **Export Credit**, the **Issuing Bank**, the country in which the **Issuing Bank** is domiciled and, if we are not the **Advising Bank**, the **Advising Bank** are all acceptable to us.
- (e) Where we add our **Confirmation** to an **Export Credit**, such **Confirmation** will be on the 'limited recourse' basis set out in clause 11.14.
- (f) You will indemnify us on demand against any **Costs** incurred or suffered by us in connection with **Confirming** an **Export Credit** without being in possession of a complete original **Export Credit** (and any amendments).

5.3 Fees

- (a) You will pay us a **Confirmation** fee and such other fees and charges as set out in the Fees Schedule.
- (b) Where an amendment increases the value of the **Export Credit** (including, but not limited to, an increase to the amount of the **Export Credit** or an extension to the validity of the **Export Credit**), you agree to pay us such reasonable further fees and charges that we may advise you where we extend our **Confirmation** to the relevant amendment.

5.4 Presentation

- (a) You must present the original **Export Credit** and all amendments (if any) to the **Export Credit** (which must be identical to the copy of the **Export Credit** on which we agreed to **Confirm**) to us at **Kiwibank's Counters** (if we do not already hold them), and all of the **Documents** required under the **Export Credit** as soon as they are available,

and not later than a date (as determined by us) which will allow the **Documents** to be processed within the validity of the **Export Credit**, each of which must comply with the requirements of the **Export Credit** to enable a **Complying Presentation**.

- (b) If the **Documents** have not been presented so as to enable a **Complying Presentation** before the date the **Export Credit** expires, our **Confirmation** ends on the date the **Export Credit** expires.
- (c) If the original **Export Credit** is amended without our prior written consent, or is different from the copy of the **Export Credit** upon which we have added our **Confirmation**, our **Confirmation** ends and we shall not be required to make any payment to you under our **Confirmation**.

5.5 Compliant Documents

- (a) If we are satisfied with the full compliance of the original **Export Credit** and **Documents** such that there will be a **Complying Presentation**, then:
 - (i) we will dispatch the **Documents** to the **Issuing Bank** for acceptance and payment in accordance with the terms of the **Export Credit**; and
 - (ii) if the **Issuing Bank** (or a **Reimbursing Bank** on behalf of the **Issuing Bank**) fails to pay all or any part of the amount claimed within 20 calendar days of the due date of the **Export Credit**, we will pay you the amount claimed and outstanding under the **Export Credit**, up to the **Confirmed** amount.
- (b) When fully compliant **Documents** are **Presented** to us, you may request that we **Honour** or **Negotiate** the **Export Credit** and/or **Documents** and to credit proceeds to your account (immediately or on acceptance of the **Documents** by the **Issuing Bank**). If we agree to your request (which we may refuse at our discretion), the **Confirmation** of the **Export Credit** will end upon your account being credited with those proceeds and we will be under no obligation to make any other payment to you.

5.6 Discrepant Documents

- (a) If the **Documents** do not fully comply with the terms of the **Export Credit**, we will advise you of the discrepancies and our **Confirmation** shall end and we shall have no further obligation to make any payment under the **Confirmation**.
- (b) If you instruct us to dispatch discrepant **Documents** to the **Issuing Bank**, we may (but need not) agree to a request from you to **Negotiate** the **Export Credit** and credit proceeds to your account on acceptance of the discrepant **Documents** for payment by the **Issuing Bank**.

5.7 Protection of Rights

- (a) You will not do any act and will refrain from doing any act if to do so may waive, vary or diminish or adversely affect in any way your right, title or interest under the **Export Credit** or any **Documents** or any contract or agreement in respect of the relevant **Goods, Services** or insurances or in the proceeds that may be derived from any of them (the "**Credit Rights**").
- (b) You will comply with all laws and the terms of any licence relating to the **Export Credit**, the **Documents** and the underlying **Goods** or **Services** to which the **Export Credit** and **Documents** relate and will provide a copy (certified as a true and correct copy in a manner acceptable to us) of any such licence to us if requested to do so.
- (c) In respect of each **Export Credit** we add our **Confirmation** to, you represent and warrant on and from the date of your application that (i) you have not agreed, and undertake that you will not at any time agree, to assign, encumber or otherwise deal with any of the **Credit Rights** to any person other than to us and there is no restriction on you doing so and (ii) to the best of your knowledge, any contract or agreement in respect of the underlying **Goods** or **Services** to which the **Export Credit** relates is legal, valid, binding and enforceable under its governing law and under the laws of the jurisdiction in which we (or you on behalf of us) may enforce those contracts or agreements, and that any claims made under those contracts or agreements will be without set-off and free of any counterclaims.

5.8 Confidentiality

- (a) If we **Confirm** an **Export Credit** at your request, you agree that you will not, unless required to do so by law, disclose the existence of any **Confirmation** arrangement we have entered into or any of its provisions to any other person without our prior written consent.
- (b) We may disclose any information and documents relating to an **Export Credit**, any related transaction and you to such relevant person or persons for the purposes of clause 5.9(g).

5.9 Assignment

- (a) If we **Confirm** an **Export Credit** at your request, until we make a payment or enter into any other obligation at your request in respect of a **Confirmed Export Credit** and/or the **Documents**, you will, at our request, assign to us absolutely all **Credit Rights** on terms satisfactory to us.
- (b) Where we subsequently make a payment or enter into any other obligation for or at your request in respect of that **Confirmed Export Credit** and/or the **Documents**, all your **Credit Rights** shall pass to us free of any charges or encumbrances.
- (c) If requested by us, you will take all action and execute any documents (including the endorsement of any drafts or other instruments and the giving of notice of the assignment) reasonably required by us, at your cost, to evidence and perfect the assignment of the **Credit Rights** under any applicable law.
- (d) If requested by us, you will take all action and steps and provide all assistance as we may reasonably require at our cost (those costs to be reasonable and agreed with us), including (i) making demand, (ii) directing any relevant person to make payment under the **Export Credit** or the related **Documents** or any contract or agreement in respect of the underlying **Goods** or **Services** to us, (iii) initiating and continuing legal action in any court or jurisdiction and conducting such legal proceedings in your name (or allowing us to use your name, failing which we may use our name) and in accordance with our instruction, and (iv) in connection with any claim by us against any party in respect of the assigned **Export Credit** or related **Documents** or any contract or agreement in respect of the underlying **Goods** or **Services**.

- (e) If any of the **Credit Rights** are not effectively assigned and transferred to us, you agree and declare that until such date as the remaining interest is effectively assigned and transferred to us, you will hold the remaining interest on trust for our sole benefit.
- (f) You cannot assign, encumber or otherwise deal with a **Confirmed Export Credit** or the associated **Credit Rights** without our prior written consent.
- (g) We may enter into a risk participation agreement, transfer or assignment of all or part of our risks relating to the **Export Credit** to another person or persons.

6. Transfer of Export Credits

6.1 Application of Provisions

The terms in this clause 6 apply if we agree to transfer an Export Credit from you as beneficiary to another beneficiary (the “**Second Beneficiary**”).

6.2 Transfer

- (a) If we agree to transfer an **Export Credit** from you to another beneficiary, you must deliver to us within 2 **Business Days** of your request all **Documents** which we specify are required to substitute for any of the **Second Beneficiary's Documents** or which do not comply with the requirements of the original **Export Credit**.
- (b) Unless you instruct us to the contrary in your application, we will substitute your drafts and invoices for those presented by the **Second Beneficiary**, and deliver to you the invoices of the **Second Beneficiary** together with our payment advice for the amount by which your drafts exceed the amount of the drafts of the **Second Beneficiary**, less any **Costs** due to us.
- (c) If you fail to deliver your drafts and invoices to us in compliance with the terms of the **Export Credit** so as to enable a **Complying Presentation**, we may forward the documents accompanying the drafts of the **Second Beneficiary** without any responsibility to pay you the difference between the amount of the **Second Beneficiary's** drafts and the amount authorised to be paid under the **Export Credit**.

- (d) We will only pay out proceeds under the **Export Credit** which have actually been received by us from the **Issuing Bank, Confirming Bank** or **Reimbursing Bank** (as applicable).
- (e) Subject to clause 6.2(b) you waive and renounce all of your rights and interests as the beneficiary of the **Export Credit** to the extent those rights have been transferred to the **Second Beneficiary**.
- (f) In consideration of us agreeing to transfer the **Export Credit** at your request, you accept full responsibility for the transfer and (i) agree that neither us nor our correspondents or agents will be responsible for the description, quantity, quality or value of the **Goods** shipped and/or the **Services** performed under the transferred **Export Credit** or for the correctness, genuineness or validity of the **Documents** and (ii) will hold us harmless and indemnified against all **Costs** we suffer or incur in connection with the transfer.

7. Payment of assigned Export Credit proceeds

7.1 Application of Provisions

The terms in this clause 7 apply if you advise us that you have assigned the proceeds of an **Export Credit** to a third party (the “**Payee**”).

7.2 Assignment

- (a) An assignment by you to a **Payee** must be an unconditional assignment of all or part of the proceeds of an **Export Credit**.
- (b) You shall be solely responsible for ensuring the enforceability and effectiveness generally of the assignment and we have no duty to advise you on such issues.
- (c) You will not, either by **Negotiation** or otherwise, further assign any right to the **Export Credit** proceeds nor issue additional instructions for payment thereof.
- (d) You represent to us that you have the power and right to make the assignment and that the relevant proceeds being assigned are not subject to any encumbrance or claims from any third party.

7.3 Payment

- (a) All payment instructions you give to us to pay the **Export Credit** proceeds to the **Payee** are irrevocable unless the **Payee** gives written authority to cancel or modify them.
- (b) We rely on the information contained in all payment instructions delivered to us and we will not make any further enquiries into such matters.
- (c) We will advise the **Payee** that payment of the **Export Credit** proceeds will be made to it in form and content acceptable to us.
- (d) We will only pay **Export Credit** proceeds to the **Payee** (i) if documentation is **Presented** under and in conformity with the **Export Credit** as part of a **Complying Presentation** and (ii) after actual receipt of the **Export Credit** proceeds by us from the **Issuing Bank, Confirming Bank or Reimbursing Bank** (as applicable).
- (e) We do not add our commitment, either actual or implied, to the arrangements entered into between you and the **Payee** which have resulted in the assignment.
- (f) You will pay us on demand any fees, charges and out of pocket expenses associated with the issuance of our advice in respect to, and the processing of, the payment instruction.

8. Shipping Guarantee/Indemnity and Shippers Release

8.1 Application of Provisions

The terms in this clause 8 apply to endorsement, countersigning or issue of letters of guarantee or other undertaking ("**Guarantee(s)**") provided by us to shipping companies (or their agents), carriers or consignors of **Goods** or other persons ("**Indemnity Beneficiaries**") to enable you to obtain replacement bills of lading, transport or title documents and/or delivery of **Goods**.

8.2 Dealing with Documents

- (a) If we agree to provide a **Guarantee** to an **Indemnity Beneficiary**, you will use all reasonable endeavours to obtain the relevant bills of lading, transport or title documents and

deliver them to the **Indemnity Beneficiaries** and procure the release of our liability under the **Guarantee(s)** and the return of the **Guarantee(s)** to us for cancellation.

- (b) If, at your request, we authorise the release or delivery of a shipment of **Goods** the subject of a drawing under an **Import Credit**, you (i) waive all discrepancies that may appear in the **Documents** and accept all such **Documents** presented under the relevant **Import Credit**, (ii) will reimburse any payment made by us under the relevant **Import Credit** irrespective of discrepancies that may appear on the **Documents** and (iii) authorise us to **Honour** any relevant drawings without examining the **Presented Documents**.

8.3 Your Liability

- (a) You will indemnify us on demand against any payment we make under the **Guarantee(s)**, including any shipping company's, consignor's or carrier's invoices, and **Costs** we suffer or incur in connection with the **Guarantee(s)**.
- (b) Before entering into the **Guarantee(s)**, if requested by us you will arrange for an issuer acceptable to us to deliver to us a backing letter of guarantee or indemnity in favour of, and on terms acceptable to, us. If any such letter is addressed to you, you will assign or transfer to us all your rights, title and interest in such letter on terms acceptable to us.
- (c) If we pay any amount under a **Guarantee**, subject to applicable law, title in the **Goods** in respect of which the **Guarantee** was issued passes to us until such time as you reimburse us in full (together with any accrued interest) and risk in such **Goods** will remain with you at all times.

8.4 Payments under the Guarantee

We are entitled to pay the **Indemnity Beneficiary** any amount that we may be called upon by the **Indemnity Beneficiary** to pay under the **Guarantee** that we believe to have been properly demanded without making any further enquiries.

9. Standby Instruments

9.1 Application of Provisions

The terms in this clause 9 apply to the issue of **Standby Instruments**.

9.2 Issue of Standby Instruments

- (a) Each **Standby Instrument** will be (i) irrevocable, (ii) issued in such a form that we consider appropriate, (iii) a separate transaction from any contract or any other dealing between us and any other party in relation to which the **Standby Instrument** is issued and (iv) binding on us regardless of what may occur or be alleged in that contract or other dealing.
- (b) It is solely your responsibility to ensure that the terms and conditions of any **Standby Instrument** are effective, enforceable and satisfactory to you. We have no responsibility to advise you on any such issues.
- (c) We may arrange for the **Standby Instrument** to be issued by our **Correspondent Bank** on such terms as we or our **Correspondent Bank** may decide and we may issue a counter-indemnity in favour of such **Correspondent Bank**.
- (d) You must examine the customer copy of the **Standby Instrument** issued by us and if there are any issues relating to the terms of the **Standby Instrument** (including whether it conforms to any application), you must notify us within **2 Business Days** after receiving your copy of the **Standby Instrument** otherwise you will be deemed to have accepted the terms of that **Standby Instrument** and waived any rights to raise any issues in connection with that **Standby Instrument**.

9.3 Payments under the Standby Instrument

- (a) We are entitled to pay the **Beneficiary** any amount that we may be called upon by the **Beneficiary** to pay under the **Standby Instrument** that we believe to have been properly demanded without making any further enquiries.
- (b) If we consider that a demand, draft or other document presented under a **Standby Instrument** does not comply with the terms of the **Standby Instrument**, (i) we may (without reference to you or making any further enquiry)

refuse the demand by notice to the party from which we received the demand, draft or the other document and (ii) we are not obliged to notify you of any determination or refusal by us prior to our determination or refusal or to seek your waiver in respect of any discrepancies before refusing the demand and any decision by us to seek a waiver at any time does not oblige us to seek a waiver at any other time in respect of other discrepancies.

- (c) We may, at any time and whether or not we have received a demand, discharge all our obligations under an unexpired **Standby Instrument** by paying the undrawn amount of the unexpired Standby Instrument (or such lesser amount that the beneficiary requires) to the beneficiary. You will indemnify us on demand for all amounts which we have paid to the beneficiary.

9.4 Documentary Responsibility

- (a) Neither us nor any of our **Correspondent Banks** are responsible for the genuineness, correctness or validity of any demands, notices, instructions, drafts or other documents received by it.
- (b) We and our **Correspondent Banks** may rely entirely on the face alone of any demand, notice, instruction, draft or other document presented to us under the **Standby Instrument** in order to determine whether or not to act or whether there has been a **Complying Presentation** under the **Standby Instrument**.

9.5 Your Liability

- (a) You will pay us an amount equal to all amounts paid or discharged by us under the **Standby Instrument** on the day on which we make or are required to make that payment or discharge liability.
- (b) You will indemnify us on demand against any payment we make under the **Standby Instrument** and **Costs** we suffer or incur in connection with the **Standby Instrument**, including
 - (i) in relation to any claim that is made or attempted to be made under the **Standby Instrument** by the beneficiary,
 - (ii) in relation to any payment to our **Correspondent Bank** under a counter-indemnity, (iii) in relation to any amount which we may pay or be required to pay on termination of

the **Standby Instrument** to the beneficiary, (iv) us acting on any representations you make to us relating to the **Standby Instrument** or (v) any failure, inability or refusal by us to honour the **Standby Instrument** because of a court order or other similar obligation, or because we are of the view that a transaction to which the **Standby Instrument** relates in any way is tainted by fraud or alleged fraud.

- (c) You agree to take prompt steps to obtain cancellation of the **Standby Instrument** on completion or termination of the contract to which it relates.

10. Granting of Security

10.1 Security Interest over Documents and Goods

- (a) As a continuing security for the payment to us of **Secured Moneys**, you grant us a **Security Interest** over the **Secured Property**.
- (b) You agree that until the **Secured Moneys** are paid in full, you will not create, allow to be created or permit to exist any other **Security Interest** in favour of anyone other than us over the **Secured Property**.
- (c) You will provide us with all the information relating to the **Secured Property** as we from time to time require.
- (d) The **Goods** will be entirely at your risk and we will not be responsible for any loss or damage or decrease in value of any **Goods**.

11. Trade Products or Services – General Terms

11.1 Application of Provisions

The following terms apply in respect of all of the **Trade Products or Services** referred to in all preceding clauses.

11.2 Conflict

In the event of any conflict between:

- (a) these **Terms** and the terms in any **ICC** rules or any other rules, these **Terms** will prevail; or

- (b) these **Terms** and a **Trade Finance Document** or any other agreement or arrangement between us and you; the following order of precedence will apply (from highest to lowest):
 - (i) the relevant **Trade Finance Document** (plus any variations);
 - (ii) these **Terms**; and
 - (iii) the other agreements or arrangements.

11.3 Assessment and Understanding

- (a) You confirm that you have fully considered the risks associated with the **Trade Products or Services** and that you are satisfied that such **Trade Products or Services** are suitable for you in the light of your circumstances.
- (b) You will be solely responsible for managing ongoing risks associated with the **Trade Products or Services** and decisions made to limit, manage or minimise risks. You acknowledge that any information or financial service provided by us that is intended to assist you in managing the inherent additional risks does not and will not represent an attempt by us to act in any form of advisory or managerial capacity to you.
- (c) If, at any time, we determine that the amount of a **Trade Product or Service** (including contingent liabilities) has increased relative to the amount of any security or payment you have provided, we may require you to (i) deposit with us on demand such amounts as we may require, (ii) provide additional security for your obligations under the **Trade Products or Services**, such security to be of a type and value and in all other respects acceptable to us or (iii) reduce the amount of the **Trade Product or Service**.

11.4 Foreign Currency

(a) Foreign Currency Conversion

If any amount payable by us or by you in connection with a **Trade Product or Service** is payable in a currency ("**Payment Currency**") different to the currency of your account from which or to which we are entitled or instructed to debit or credit that payment ("**Account Currency**") then (as applicable) (i) we will make the payment in the Payment Currency and we will debit an equivalent amount in the Account Currency or (ii) we will credit an equivalent amount

in the Account Currency to your account following receipt of the credit amount in the Payment Currency, in accordance with our standard procedures at that time for currency conversion and (unless agreed otherwise) on the basis of the exchange rate that we would, in the ordinary course, offer to you, or any other rate agreed with you.

(b) **Availability of Foreign Currency**

You acknowledge that we cannot control the availability of any currency, and that we will not be responsible for any **Costs** which you may suffer or incur in connection with non-availability to us (after exercising reasonable endeavours) of any currency in connection with any **Trade Product or Service**.

(c) **Liability**

You will comply with all foreign exchange laws applicable to the **Trade Products or Services** and will pay us on demand such amount as we may be required to pay on account of such laws. We will not be liable and you will indemnify us against any third party claim for any **Costs** arising from any requirements imposed by, or the exercise of or conditions imposed under the applicable foreign exchange laws by any **Regulatory Authority**.

11.5 Compliance with Laws

- (a) You will comply with all laws and the terms of any licence relating to the **Goods** and/or **Services** and the export or import of **Goods** and will provide a copy (certified as a true and correct copy in a manner acceptable to us) of any such licence if we request it.
- (b) You represent and warrant to us that the provision of the **Trade Products or Services** to you in accordance with your instructions will not breach any laws applicable to the **Trade Products or Services**.
- (c) When you apply to use **Trade Products or Services**, you warrant and represent (on a continuing basis) and undertake to us that the underlying transaction has not previously been, and will not while the subject of the transaction be, the subject of another **Trade Product or Service** provided by us or a same or similar product provided by any other person (unless otherwise agreed by us in writing).

11.6 Commissions, Fees, Charges and Expenses

- (a) You will pay all commissions, fees, charges and other amounts which apply in respect of any **Trade Product or Service** as stated in the **Fees Schedule** or any **Trade Finance Document** or as we otherwise agree with you.
- (b) All commissions, fees and charges paid to us are non-refundable unless otherwise stated in writing.
- (c) You will pay all (i) charges, duties and **Taxes** (including indirect **Taxes**) payable in connection with the **Goods** and/or **Services** and the import or export of **Goods**, (ii) freight and other amounts payable under any contract of carriage or otherwise in relation to a **Trade Product or Service** and (iii) charges levied on us by any third party (including any **Correspondent Bank** or **Negotiating Bank** or its agent) in respect of the **Trade Product or Service** provided by us.
- (d) We may amend, supplement or replace the **Fees Schedule** or otherwise increase, decrease, apply new fees and charges or change the terms of payment of any fee or charge payable in connection with a **Trade Product or Service** by giving you 14 days' prior notice.

11.7 Payments

- (a) We may make any payment or discharge any liability in respect of a **Trade Product or Service** by way of actual cash payment, book entry, transfer of funds or otherwise as is determined by us.
- (b) All sums payable by you to us in connection with a **Trade Product or Service** shall be paid (i) free and clear of any restriction or condition, (ii) free and clear of and (except to the extent required by law) without any deduction or withholding on account of any **Tax** or **Regulations** and (iii) without any deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

11.8 Accounts and Set-Off

- (a) You irrevocably authorise us to debit all fees and charges payable in connection with these **Terms** or any **Trade Product or Service** by you (whether or not demand has been made) from any account you may have with us. We may also deduct them from the proceeds of any **Export Credit** or **Export Collection**. We will advise you if we make any such debit.
- (b) The authority to debit your account does not oblige us to do so and does not relieve you of your obligation to pay any amount when due under a **Trade Finance Document**.
- (c) We may, from time to time without further authority than these **Terms** and without giving you any notice or making any demand, set-off or apply in or towards satisfaction of any amounts due to us (i) sums standing to the credit of any of your accounts with us, (ii) any other amounts at any time owing by us to you and (iii) if, at any time, any amounts owing to us are subject to any contingency or are not quantified we may withhold payment of any interest or other amount owing by us, until those amounts are no longer subject to that contingency or are quantified.

11.9 Drawing or release against funds

- (a) If we allow you to draw against funds to be collected or transferred from any account(s), you will on demand reimburse us in full such drawn amount if we do not receive the funds in full when due or if, after we have accepted the transfer, we are prevented from collecting or freely dealing with the funds in accordance with usual banking practice.
- (b) If a payment to us by you or any other person in connection with a **Trade Product or Service** is avoided by law, or is recovered from us, the relevant person's obligation to make that payment and their obligations under the **Documents** or applicable **Trade Finance Documents** will be deemed to have not been discharged. Notwithstanding any release, settlement or other discharge we may have given, we may exercise all our rights we were entitled to exercise prior to that payment being made, as if that payment had not been made, and you will indemnify us for all **Costs** incurred by us in connection with the payment not being final.

11.10 Amendments

- (a) Subject to clause 11.6(d), we may change these **Terms** or the terms of any **Trade Finance Document** (including commissions, fees and charges) by giving you 14 days' prior notice.
- (b) We can give you notice of any changes by the methods listed in clause 3 of our General Terms and Conditions.

11.11 Anti-money laundering and sanctions

- (a) We may delay, block or refuse to process any transaction without incurring any liability and without informing you if we suspect that the transaction (i) may breach any **Regulations** or any other prohibitions that may be applicable to us, (ii) involves any person that is itself subject to a relevant sanction or is connected, directly or indirectly, to any person that is subject to such sanctions imposed by the United Nations, the European Union, the United States, or any other country or (iii) may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful.
- (b) You will provide us with all information which we require in order to process a transaction and to manage any risk contemplated by, and to comply with, the requirements in this clause 11.11.
- (c) We may disclose any information concerning you to any law enforcement, **Regulatory Authority** or court where required by any law in any country without informing you.
- (d) Unless you have disclosed that you are acting in a trustee capacity or on behalf of another party, and we have accepted such disclosure, you warrant that you are acting on your own behalf in entering into these **Terms**.
- (e) You declare and undertake to us that the payment of monies and/or processing of any transaction by us in accordance with your instructions will not breach any laws applicable to the transaction.

11.12 Responsibility

- (a) All instructions and correspondence relating to any **Trade Product or Service** utilised by you will be sent at your risk.
- (b) We and our agents are not responsible for and will not be liable for any **Costs** arising from:
 - (i) any **Goods, Documents** or items in our possession;
 - (ii) any errors, omissions, service failures or delays in the transmission or delivery of any message, or any delay in receipt of payment from any third party;
 - (iii) any misrepresentation or error as to quantity, quality, nature or value of goods for the validity or accuracy of any **Bill of Exchange** or other **Document**, or any variation in the instructions agreed to by a **Negotiating Bank**;
 - (iv) us acting in accordance with applicable **Regulations**;
 - (v) things beyond our control, including any act, omission or default on the part of any **Correspondent Bank, Collecting Bank** or settlement bank; or
 - (vi) us acting in accordance with agreements we have with other financial institutions regarding the business dealings with those institutions, notwithstanding that you may have given instructions to the contrary.
- (c) We will have no responsibility to investigate the correctness of any instruction received by us or to investigate the authenticity of any signature or authorisation (electronic or otherwise) appearing upon any such instruction or that any signatory or authoriser possesses any title, office or position which in such instruction the signatory claims or purports to possess.

11.13 Liability and indemnity

- (a) Our total aggregate liability in respect of all **Costs**, whether arising from breach of contract, under or in connection with these **Terms** or any **Trade Finance Document** in respect of a **Trade Product or Service**, shall in no event exceed the total fees and charges paid to us under these **Terms** or any **Trade Finance Document** in respect of the relevant **Trade Product or Service**, other than to the extent that liability arises due to Kiwibank's fraud, negligence, or wilful misconduct.

- (b) We will only be liable for direct loss, cost or damage suffered or incurred by you which arises from a material breach by us of these **Terms** or any other **Trade Finance Document** or the fraud, negligence or wilful misconduct by us.
- (c) Without limiting clause 11.13(b), we will not be liable for any (i) loss of profit, loss of revenue, loss of business opportunity, or damage to goodwill or (ii) indirect, consequential or special loss or damage.
- (d) Except as expressly provided in these **Terms** or any **Trade Finance Document**, all representations, undertakings, inducements and warranties (statutory, express, implied or otherwise) by us are excluded to the extent permitted by law.
- (e) You indemnify us against, and will pay on demand, any **Costs** of whatever kind which we suffer or incur in connection with
 - (i) us providing or not providing the **Trade Product or Service** to you,
 - (ii) us complying with any of your instructions or purported instructions in relation to any **Trade Product or Service**,
 - (iii) your use of the **Trade Product or Service** and
 - (iv) the failure of you or your agents to comply with these **Terms**, any **Trade Finance Documents** or any **Regulation** relating to the import or export of, or other dealing with, the **Goods** or the performance of **Services** except to the extent that any **Costs** under sub-paragraphs (i), (ii) or (iii) directly arise from our breach of these **Terms** or any **Trade Finance Documents** or are caused by the mistake, fraud, negligence or wilful misconduct of Kiwibank or any receiver appointed by Kiwibank.
- (f) Each indemnity under these **Terms** is a continuing obligation, separate and independent from your other obligations and will survive the termination or completion of any **Trade Product or Service**.
- (g) We will not be obliged to institute or defend any legal or other proceedings by reason of any claim or demand you make on us.

11.14 Limited Recourse

- (a) Notwithstanding anything contained or implied in these **Terms** or any **Trade Finance Document** (including an agreement for us to provide the **Trade Product or Service** to you on a “without recourse” basis), we have no liability to pay you or if already paid, we will have full recourse to you for repayment of the amount paid by us, and payment of interest, fees and charges and any **Costs** we incur, and you will pay that amount to us on demand, if (i) there is a fraud, illegality or unauthorised act committed by any person (other than us) in connection with the **Goods** and/ or **Services** or any document, agreement, invoice, draft or instrument in connection with the **Trade Product or Service** or (ii) there is, in whole or in part, non payment to us by any person or we are required to reimburse any person for moneys received by us, under any document, agreement, documentary credit, invoice, draft or instrument in connection with the **Trade Product or Service** because of (1) a commercial dispute between us and any other person upon which that person or another person relies or purports to rely to not pay us or claim reimbursement from us or (2) any injunction, stop payment order or other court order (whether or not subsequently discharged).
- (b) You will notify us in writing if you are aware that any act, event or circumstance described in clause 11.14(a) has occurred or is likely to occur and the details of that act, event or circumstance.

11.15 Use and Disclosure of Customer Information

- (a) You authorise us and any of our related parties to use and disclose any personal or other information about you or the **Trade Products or Services**, or any person connected in any way with the **Trade Products or Services** at any time held by us or any of our related companies (i) to any person making a claim under and **Import Credit** or a **Standby Instrument**, (ii) for the purpose of establishing and maintaining the relationships between you and us and any of our related companies, (iii) for any other purpose reasonably required by us in connection with these **Terms** and each **Trade Finance Document**, (iv) to any participants in payments systems, **Correspondent Bank**, **Regulatory Authority**

or any other person for any purpose which we or any **Correspondent Bank** considers necessary or reasonably required in connection with any **Regulation** or the **Trade Products or Services** and (v) to your representatives (for example, your lawyer, mortgage broker or attorney).

11.16 Security

- (a) If we require you to give us any security or there is a deemed **Security Interest** in our favour, you must execute such documentation and/or take such action as we may require to grant, perfect, preserve or enforce that security.
- (b) On the enforcement of those **Security Interests** created by, or given in connection with, these **Terms** or any **Trade Finance Document** to which the **PPSA** applies sections 114(1) (a), 133 and 134 of the **PPSA** shall not apply. You also waive any rights you may have under sections 116, 120(2), 121, 125, 129 and 131 of the **PPSA** on such enforcement.
- (c) Subject to any applicable **Regulations**, we will have a lien on all your property in our possession or control, for custody or any other reason and whether or not in the ordinary course of banking business, with power for us to sell such property to satisfy any obligations owed by you to us.

11.17 Representations and Warranties

You represent, warrant and acknowledge to us that (i) for the purposes of section 13 and in accordance with section 14 of the Credit Contracts and Consumer Finance Act 2003, the **Trade Products or Services** provided to you by us will be used solely for business purposes and (ii) for the avoidance of doubt, to the fullest extent permitted by law, we exclude any and all liability to you under sections 9, 12A, 13 and/or 14(1) of the Fair Trading Act 1986.

11.18 Attorneys

- (a) You irrevocably appoint us and any of our authorised officers severally to be your attorney (with full power to appoint substitutes and to sub-delegate) to, on your behalf and in your name or otherwise, and at such time and in such manner as the attorney may think fit to do any thing which you may be obliged to do or ought to do under these **Terms** or any **Trade Finance Document** and which you have failed to do (including filling in any blanks in any document) and

generally carry into effect, complete, facilitate the exercise or purported exercise of all or any of our rights, powers and discretions pursuant to these **Terms** or any **Trade Finance Document**.

- (b) You ratify and confirm and agree to ratify and confirm whatever any such attorney (or substitute or sub-delegate) shall do or purport to do in the exercise or purported exercise of any powers of attorney.

11.19 Severability

If, in any jurisdiction, a provision of these **Terms** or any terms in any documents or agreements in connection with any **Trade Products or Services** is illegal or unenforceable, the relevant terms or provisions will be interpreted, for the purpose of that jurisdiction only, as if it had never included the provision so far as the provision is illegal or unenforceable. The remaining provisions will not be affected and these **Terms** will be interpreted to best give effect to the intentions of the parties as they were originally entered into.

11.20 General

- (a) You represent and warrant that all information given to us, including financial information provided by you, or someone on your behalf, in connection with any application for, or the supply of, any **Trade Product or Service** is true and complete and accurate in all material respects and that you do not know of any material facts or circumstances which have not been disclosed to us which could affect our decision to provide any **Trade Product or Service** to you.
- (b) You must deliver to us within a reasonable time frame (as specified by us) following our request, any information which we require in relation to the provision of a **Trade Product or Service** to you, or which may assist or improve in the provision of **Trade Products or Services** to you from time to time (including information relating to your business, financial condition and operations).

11.21 Notices

- (a) Any notice, document or communication that you are required or permitted to provide to us under these **Terms** must be:
 - (i) sent by email to tradefinance@kiwibank.co.nz; or
 - (ii) given by any other means that we agree in writing are acceptable.
- (b) Any notice, document or communication that we are required or permitted to provide to you under these **Terms** may be given in accordance with the methods listed in clause 3 of our General Terms and Conditions.

11.22 Governing Law

Unless specified otherwise, the **Terms** and each **Trade Finance Document** will be governed by and construed in accordance with the laws of New Zealand and you submit to the non-exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining all disputes under or in connection with these **Terms** and each **Trade Finance Document**.

11.23 Interpretation

Unless the context requires otherwise, words in these **Terms** which are bold are words with specific meanings, as set out in clause 11.24 or in the **ICC** rules (as applicable) and:

- (a) references to “**you**” means the individual(s) or organisation named as the holder(s) of the relevant account, or as the customer(s) for the relevant product or service;
- (b) references to “**we**”, “**us**” or “**our**” are references to Kiwibank Limited and its successors, assignees, authorised agents and where we use third parties or related organisations to deliver aspects of our accounts, services or products, such third parties or related organisations;
- (c) derivatives of defined words are to have the corresponding meaning;
- (d) “**law**” includes common law, and any constitution, decree, judgment, legislation, order, ordinance, **Regulation**, statute, treaty or other legislative measure, in each case of any jurisdiction whatever;

- (e) branches of a bank in different countries are considered to be separate banks;
- (f) any document includes that document as amended, supplemented or replaced from time to time;
- (g) any statute or a provision of a statute includes that statute or provision as amended, modified, substituted or re-enacted from time to time and any **Regulations** and other instruments issued or made under that statute from time to time; and
- (h) our website means www.kiwibank.co.nz.

11.24 Defined Terms

“Advising Bank” is defined in the **UCP** as: “The bank that advises the **Credit** at the request of the **Issuing Bank**” and shall have that meaning in these **Terms**.

“Back to Back Credit” means an **Import Credit** that is issued at or about the same time as a **Master Credit** that covers the same **Goods** purchased from a supplier and that you on sell.

“Beneficiary” is defined in the **ISP** as:

“a named person who is entitled to draw on a standby”,
and shall have that meaning in these **Terms**.

“Business Day” means any day other than a Saturday or Sunday or a nationwide New Zealand public holiday.

“Bill of Exchange” means a bill of exchange as defined in the Bills of Exchange Act 1908 or any trust receipt, promissory note or deferred payment obligation.

“Collection” is defined in the **ICC** Uniform Rules for Collections 522 as: “The handling by banks of documents as defined in sub-Article 2(b), in accordance with instructions received, in order to:

- (i) obtain payment and/or acceptance; or
- (ii) deliver documents against payment and/or against acceptance; or
- (iii) deliver documents on other terms and conditions,”

and shall have that meaning in these **Terms**.

“Complying Presentation” is defined in the **UCP** as:

“A **Presentation** that is in accordance with the terms and conditions of the **Credit**, the applicable provisions of these **UCP** rules and international standard banking practice” and shall have that meaning in these **Terms**.

“Confirmation” is defined in the **UCP** as: “A definite undertaking of the **Confirming Bank**, in addition to that of the **Issuing Bank**, to **Honour** or **Negotiate a Complying Presentation**” and shall have that meaning in these **Terms**.

“Confirming Bank” is defined in the **UCP** as “The bank that adds its **Confirmation** to a **Credit** upon the **Issuing Bank’s** authorisation or request” and shall have that meaning in these **Terms** except that it shall also apply where we have given a definite undertaking to **Honour** or **Negotiate a Complying Presentation** where you have requested us to do so in accordance with clause 5.2(b).

“Correspondent Bank” means any bank which provides any banking or other services at our request in connection with a **Trade Product or Service**.

“Costs” mean any reasonable costs (including courier costs), charges, fees (including any SWIFT fees), commissions, indemnities, taxes, damages, losses, expenses (including legal fees and expenses on a full indemnity basis and goods and services and similar taxes thereon), claims, liabilities (absolute or contingent), fines and penalties and includes loss of profit and costs in liquidating or redeploying deposits or other funds and any other third party costs levied against us.

“Credit” is defined in the **UCP** as: “Any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the **Issuing Bank** to **Honour a Complying Presentation**” and shall have that meaning in these **Terms**.

“Credit Rights” has the meaning set out in clause 5.7(a).

“Documents” means **Bills of Exchange**, bills of lading, all other documents of title, transport documents, insurance policies, invoices and all other documents which evidence and are necessary to manage, collect, recover and enforce payment for

Goods or Services (whether pursuant to a **Credit**) and, in relation to a **Collection**, shall also have the meaning ascribed to the term in the ICC Uniform Rules for Collections.

“Export Collection” means a **Collection** where we act on your behalf for collecting and receiving payment for a shipment.

“Export Credit” means a **Credit** issued by another bank in your favour which we already have agreed to or may **Honour**, **Negotiate**, purchase, **Present**, transfer, finance and/or **Confirm** for you or at your request.

“Fees Schedule” means the schedule of fees for **Trade Products or Services** that we provide to you from time to time (as amended, supplemented or replaced in accordance with clause 11.6(d)).

“Goods” mean the goods or produce described in the relevant **Credit**, invoice or sales contract or that is otherwise the subject of the relevant **Trade Product or Service**.

“Honour” is defined in the **UCP** as:

- a. pay at sight if the **Credit** is available by sight payment.
- b. to incur a deferred payment undertaking and pay at maturity if the **Credit** is available by deferred payment.
- c. to accept a **Bill of Exchange** (“draft”) drawn by the beneficiary and pay at maturity if the credit is available by acceptance,”

and shall have that meaning in these **Terms**.

“ICC” means the International Chamber of Commerce.

“ISP” means the ICC International Standby Practices.

“Import Collection” means a **Collection** we carry out as presenting bank for collecting and remitting payment for a shipment from an overseas exporter.

“Import Credit” means a **Credit** we issue at your request under clause 2 and, for the avoidance of doubt, does not include a **Standby Instrument** issued under clause 9.

“ISBP” means the International Standard Banking Practice for the Examination of Documents under Documentary Credits.

“Issuing Bank” is defined in the **UCP** as: “The bank that issues a **Credit** at the request of an applicant or on its own behalf” and shall have that meaning in these **Terms**.

“Kiwibank’s Counters” means the counters of Kiwibank at Ground Floor, NZ Post House, 7-27 Waterloo Quay, Wellington 5045 or any alternative location notified to you from time to time.

“Master Credit” means an **Export Credit** issued either at or about the same time as a related **Back to Back Credit**.

“Negotiation” is defined in the **UCP** as: “The purchase by the **Nominated Bank** of drafts and/or **Bills of Exchange** (drawn on a bank other than the **Nominated Bank**) and/or documents under a **Complying Presentation**, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the **Nominated Bank**” and shall have that meaning in these **Terms**.

“Nominated Bank” is defined in the **UCP** as: “The bank with which the **Credit** is available or any bank in the case of a **Credit** available with any bank” and shall have that meaning in these **Terms**.

“PPSA” means the Personal Property Securities Act 1999.

“Presentation” is defined in the **UCP** as: “Either the delivery of **Documents** under a **Credit** to the **Issuing Bank** or the **Nominated Bank** or the **Documents** so delivered” and shall have that meaning in these **Terms**.

“Regulatory Authority” means local or foreign governments and their instrumentalities.

“Regulations” means laws including, without limitation, any subordinate instrument, and the acts, practices and policies of **Regulatory Authorities**, whether or not having the force of law. Regulations may be those in any place where we or any other financial service provider involved in a **Trade Product or Service** (including a **Correspondent Bank**) operates, or with which the **Trade Product or Service** has some direct or indirect connection, or to which or from which a payment or instruction is made or received or in which some other thing is done, or may be the Regulations of or applicable to the currency of payment.

“Reimbursing Bank” means the bank with which the **Issuing Bank** maintains an account and which is authorised by the **Issuing Bank** to charge that account to pay claims received from the **Negotiating Bank** for **Documents** that have been **Presented**.

“Second Beneficiary” has the meaning set out in clause 6.1.

“Security Interest” has the meaning given to it by section 17 of the PPSA except in respect of any real property and any other property to which the PPSA does not apply, in which case **“Security Interest”** includes a charge over such property.

“Secured Moneys” means all amounts that at any time are due and owing by you to us, or you owe to us but are not then due, or you owe to us upon a contingency (directly or indirectly and for any reason) in connection with any **Trade Product or Service** provided to you.

“Secured Property” means the **Documents** and **Goods** and their proceeds now or at any time delivered to, or deposited with us or that are otherwise in our possession, custody or control.

“Services” means the services described in the relevant **Credit**, invoice or sales contract.

“Standby Instrument” means a standby letter of credit, performance bond, advance payment bond, bid bond/tender bond, demand guarantee and such other instruments as we agree to issue pursuant to clause 9 from time to time, and further includes any counter-indemnity issued by us in favour of our **Correspondent Bank** to facilitate the issuance of any of the above-mentioned instruments by our **Correspondent Bank**. For the avoidance of doubt, a **Standby Instrument** does not include an **Import Credit**.

“Taxes” means any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including interest, penalties, fines and charges in respect of the Taxes) imposed, levied, collected, withheld or assessed by any **Regulatory Authority**, on whomsoever imposed, levied, collected, withheld or assessed.

“Terms” means these Trade Terms and Conditions.

“Trade Finance Document” means any agreement, letter, application or other document setting out the terms and conditions of a **Trade Product or Service** and includes each document creating a security interest provided to us in connection with a **Trade Product or Service**.

“Trade Product or Service” means any trade related product, service or facility provided by us to you in connection with the purchase, sale, storage, release, preparation or shipment of, or other dealings in, **Goods** or the performance of **Services**.

“UCP” means the Uniform Customs and Practices for Documentary Credits of the **ICC**.

A copy of Kiwibank's latest Disclosure Statement is available at kiwibank.co.nz/about-us/legal.docs or pick up a copy at your local Kiwibank.

All you need

Kiwibank offers a full range of accounts and services to suit your needs.

To find out more call us:

- If **you** are calling from within New Zealand, freephone on 0800 523 523.
- If **you** are calling **us** from **overseas**, phone collect through an International Operator on 64 (9) 985 5000, 24 hours a day.



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