

## Terms and Conditions – Import Documentary Credits

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 Westpac Banking Corporation ("**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.

**3.2** As further security for payment of the Secured Indebtedness, the Customer agrees, at any time and from time to time on demand, to deliver, convey, transfer or assign to the Bank additional security of a value and character satisfactory to the Bank, or to make such payment as the Bank may require.

**3.3** The Negotiating Bank is to forward the Documents and the drafts to the Bank together with their reimbursement instructions.

#### 4. Term Drawings

**4.1** If, prior to the payment in full of the Secured Indebtedness, the Bank releases to the Customer the Documents to enable the Customer to obtain delivery of the Goods, the Customer must:

- (a) hold the Documents, the Goods and the proceeds of any sale or disposal of the Goods in trust for the Bank;
- (b) ensure that the Goods are clearly externally marked and identified as belonging to the Bank and stored at all times separately from other goods;
- (c) keep the Goods duly insured, in the Bank's name, against fire, theft, loss, damage and all other risks;
- (d) immediately on receipt of the proceeds of any sale or other disposal of the Goods, pay such proceeds to the Bank, without deduction; and
- (e) if required by the Bank, do all things necessary to give the Bank full authority to receive from any purchaser, any outstanding proceeds of any sale or other disposal of the Goods.

**4.2** The Customer acknowledges and agrees that, where this clause applies:

- (a) the Customer has no claim, lien or set-off of any kind in respect of anything which the Customer holds on trust for the Bank under this clause;
- (b) the Goods shall remain the property of the Bank until sold or otherwise disposed of; and
- (c) any proceeds of sale or other disposal paid to the Bank in accordance with this clause, may be appropriated and applied by the Bank, as it thinks fit.

#### 5. Customer's liability in respect of the Credit

**5.1** 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.

**5.2** 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
- (c) 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.

**5.3** The Customer indemnifies the Bank against, and must pay the Bank on demand the amount of, all losses, damages, liabilities, 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):

- in relation to any claim that is made or attempted to be made under the Credit; or
- the Bank acting on any representations made by the Customer to the Bank relating to this Credit; or
- 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.

This indemnity shall survive termination or expiration of the Credit.

**5.4** 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.

## **6. Responsibility and liability**

**6.1** 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.

**6.2** 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 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.

**6.3** 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
- (f) 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.

## **7. Making payments under the Credit**

**7.1** 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.

**7.2** 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.

**7.3** 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. 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.

**7.4** 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.

**7.5** 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.

**7.6** The Customer acknowledges that the Bank may disclose information about the Customer to any person making a claim under the Credit.

## **8. Funding**

**8.1** 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.

**8.2** 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.

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

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

You should be aware that:

- transactions may be delayed, blocked or refused where we have reasonable grounds to believe that they breach Australian or international law or sanctions, or where we need to obtain further information to assist our compliance process;
- where transactions are delayed, blocked, frozen or refused, Westpac and its correspondents are not liable for any loss you suffer (including consequential loss);
- you must not initiate or conduct a transaction that may be in breach of Australian or international law or sanctions.

You should also be aware that:

- we may from time to time require additional information from you to assist us in our compliance process;

- where legally obliged to do so, we will disclose the information gathered to regulatory and/or law enforcement agencies, other banks, other members of the Westpac Group, service providers or to other third parties.

You provide Westpac with the following undertakings and indemnify Westpac against any losses arising from any breach by you of such undertakings:

1. you 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).

## **11. Our Reporting Obligations**

We are required to identify certain US persons in order to meet account information reporting requirements under local and international laws.

If you or (where you are an entity) any bearer\* of the entity and/or any individual who holds an interest in the entity of more than 25% (a Controlling Person) are a US citizen or US tax resident, you must telephone 1300 658 194 at the time of accepting these Terms and Conditions. When you contact us you will be asked to provide additional information about your US tax status and/or the US tax status of any Controlling Person which will constitute certification of US tax status for the purposes of the application to which these Terms and Conditions relate.

Unless you notify us that you and/or any Controlling Person are a US citizen or US tax resident as specified above, accepting these Terms and Conditions constitutes certification that you and/or any Controlling Person are not a US citizen or US tax resident.

If at any time after account opening, information in our possession suggests that you and/or any Controlling Person may be a US citizen or US tax resident, you may be contacted to provide further information on your US tax status and/or the US tax status of any Controlling Person. Failure to respond may lead to certain reporting requirements applying to the account.

\*Director of a company, partner in a partnership, trustee of a trust, chairman, secretary or treasurer of an association or co-operative.