

Terms and Conditions

IN CONSIDERATION of you, The Bank of East Asia, Limited, whether acting through your head office or any branch or subsidiary, issuing/renewing a Standby Letter of Credit (hereinafter called "the SBLC" which term includes all amendments to such Standby Letter of Credit) on the instructions of my/our application I/we (jointly and severally) acknowledge, agree and undertake hereby as follows:

- 1) I/we shall indemnify you and keep you indemnified against all liabilities, losses, damages, costs (including legal costs on a full indemnity basis), expenses, claims and demands which you may incur or sustain in relation to or arising out of the SBLC, any renewals or any amendments thereto, modifications thereof and any letter or documents made supplemental or in consequence thereto including all costs (including legal costs on a full indemnity basis), charges and expenses you may incur in connection with the exercise, enforcement and/or perfection, or attempted exercise, enforcement and/or perfection of your rights hereunder. For the avoidance of doubt, our obligation to indemnify you under and pursuant to the agreement between you and us as stated in the terms and conditions overleaf and herein (**the agreement**) shall not be negated or reduced in any way in the event of any amendment or variation to the underlying transaction in connection with or as security of which the SBLC is issued or renewed.
- 2) Without prejudice to the generality of my/our aforesaid indemnity, I/we hereby authorize you (1) to charge me/us your commission and fees in connection with this application and further (2) at your discretion and without reference to me/us to set off any money in your hands belonging to or beneficially owned by me/us or to debit against any account which I/we now or may hereafter have or maintain with you whether in Singapore or abroad and whether in Singapore Dollars or a foreign currency any sum or sums of money which you may pay in respect of the counter standby letter of credit/counter indemnity given to your correspondent bank. I/we further authorize you to effect any exchange of currency in connection therewith and I/we agree to pay interest on any money so paid by you at your usual overdraft rates or such rate as may be applicable to us (which shall be determined at your discretion) from the date when payment is due by you until repayment thereof is received by you from me/us. I/we undertake, at your request, to effect in your favour such security as you may require from time to time and in connection therewith, execute, complete and deliver to you such documentation as you may require from time to time.
- 3) For the avoidance of doubt, our obligation herein to indemnify you shall not be negated or reduced in any way in the event of any amendment or variation to the underlying transaction in connection with or as security of which the SBLC is issued or renewed.
- 4) I/we agree that our liabilities hereunder are irrevocable and shall remain in full force and effect until the SBLC issued or renewed by you is released or expired or returned to you for cancellation and your liability there under is fully discharged to your satisfaction. We confirm that our liability under the SBLC (whether issued or renewed by you/your correspondent bank) shall be a continuing liability and shall remain in full force and effect. For the avoidance of doubt, any termination of the SBLC shall not release us of any of our obligations hereunder in respect of or in connection with any claims made against you/your correspondent bank in relation to and/or in connection with the SBLC.
- 5) In the event that you are instructed to issue in favour of your correspondent bank a counter SBLC/counter-indemnity in consideration of their issuance of a SBLC in favour of the beneficiary, the obligation to indemnify you as set out herein shall also extend to all liabilities, claims, demands, payments, actions and proceedings, expenses including legal costs on a solicitor-client basis and losses of whatsoever nature, amount or description which may be made, taken or suffered by you in relation to or arising out of such SBLC/indemnity as you may have issued.
- 6) I/we acknowledge and understand that where the SBLC is issued or renewed by you, your correspondent bank may (depending on each case) be required to either issue its own SBLC in favour of the beneficiary or add a confirmation to the SBLC issued by you on such terms and conditions as you and/or your correspondent bank may deem fit and we agree that our obligations under the agreement shall extend to and not be affected or prejudiced in any way by the issuance of such a SBLC or the addition of such confirmation by your correspondent bank. In the event that a SBLC is issued by your overseas branch against or with a counter SBLC/counter indemnity which you issue in favour of your overseas branch, we agree that such a SBLC shall for the purposes of the agreement be deemed to be issued by you on our application and we remain liable to indemnify you in full and in accordance with the terms herein in respect of such SBLC, in the event of any judgment, finding or determination that the counter SBLC/ counter indemnity issued by you in favour of your overseas branch is invalid.
- 7) Any demand, notification or certificate given by you specifying the moneys due and payable under or in connection with any of the provisions of this indemnity shall, in the absence of manifest error, be conclusive and binding on me/us.
- 8) We agree that you or your correspondent bank may make payment under the SBLC of any sum or sums of money without requiring or obtaining any evidence or proof that the amount claimed or requested by the beneficiary (which expression shall include its successors and assigns) or the amount paid by you or your correspondent bank is due and payable to the beneficiary and without any notice or reference to or further authority from us notwithstanding that we may dispute the validity of such claim, request or payment and notwithstanding that the beneficiary has not demanded payment thereunder. Any demand, notification or certificate given by you specifying the moneys due and payable under or in connection with any of the provisions of the agreement shall, in the absence of manifest error, be conclusive and binding on us. We also agree that we shall not at any time question or challenge the validity legality or otherwise of any payment by you or your correspondent bank under or in connection with the SBLC or deny any liability hereunder on the ground that such payment or any part thereof made by you or your correspondent bank was not due or payable by you under the SBLC or on any ground whatsoever.
- 9) Correspondent bank shall include an overseas branch of your bank.
- 10) In the event that the SBLC to be issued by you or your correspondent bank is subject to and is to be governed by the laws of a jurisdiction other than the Republic of Singapore and should a demand be subsequently made by the beneficiary under the SBLC, we agree and authorise you to then, at your own discretion, obtain an opinion from legal counsel acceptable to you on the validity and enforceability of the SBLC, prior to your or your correspondent bank making payment in accordance with the beneficiary's demand. We further agree that we shall bear the entire cost of your obtaining such an opinion and that we shall indemnify you for any loss or expense whatsoever suffered by you due to any delay in the payment of any sum to the beneficiary caused by your having to obtain such an opinion.
- 11) I/we also agree that I/we shall not at any time question or challenge the validity legality or otherwise of any such payment by you or your correspondent bank under or in connection with the SBLC or deny any liability hereunder on the ground that such payment or any part thereof made by you or your correspondent bank was not due or payable by you under the SBLC or on any ground whatsoever.
- 12) We confirm that the issuance or renewal of the SBLC to the beneficiary on behalf of the third party for our account is of commercial benefit to us and we acknowledge that the issuance of the SBLC is in reliance of our confirmation herein. We further confirm that we will not dispute the existence of such commercial benefit.
- 13) Where the text/format of the SBLC is supplied by us, the beneficiary named overleaf or any other party, you are under no responsibility or liability to us to ensure the accuracy, correctness, legality or completeness of the format/text. We are fully aware of the contents of the SBLC and the consequences thereof and we agree that we would not at any time deny liability hereunder on the basis that you have a duty to advise and failed to do so. Where the translation of the SBLC is forwarded by us, or the beneficiary named overleaf to you (whether translated by us or otherwise or any other party), we confirm that we shall bear the risk of such translation and shall at all times keep you fully and completely indemnified from and against all liability, claims and demands, actions and proceeds, losses and expenses including, without limitation, all legal costs or an indemnity basis which may be incurred by you and all bank charges, costs, disbursements, expenses and other liabilities of whatsoever nature or description which may be made or taken or suffered by you in relation to or arising out of such translation.
- 14) I/we shall hold you and your agents harmless and free from any responsibility whatsoever and howsoever arising for errors, delay, omissions or inaccuracy that may happen in the transmission or interpretation of instructions, or for the correctness, regularity or genuineness of the documents submitted, or for the loss of or delay in forwarding the documents or for the loss or late or non-arrival of part or all of the said documents.
- 15) I/we undertake to place with you a cash deposit satisfactory to you as security and to furnish you with such additional security (in form and substance acceptable to you) on demand. If a satisfactory cash deposit has not been made against the SBLC, you are at liberty to earmark or charge my/our account at your absolute discretion with all monies so paid or for which you are liable under the SBLC. And it is agreed and understood that I/we shall not be entitled to claim the refund or the release of the funds earmarked in my/our account until and unless the said draft(s) drawn under the SBLC and all other monies which may be due to you shall have been paid in full and any other indebtedness by me/us to you in respect of any other account dealing or transaction between us has been settled.
- 16) In the event that the SBLC is issued by your overseas branch against or with a counter standby letter of credit/ counter indemnity which you issue in favour of your overseas branch, I/we agree that such SBLC shall for the purposes of this agreement be deemed to be issued by you on my/our application and we remain liable to indemnify you in full and in accordance with the terms herein in respect of such SBLC, in the event of any judgment, finding or determination that the counter standby letter of credit/ counter indemnity issued by you in favor of your overseas branch is invalid.
- 17) I/we agree that any action, process or other step taken by you or any of your correspondents under or in connection with the SBLC, if in good faith and in conformity with such foreign or domestic laws, customs or regulations as you or any such correspondents may deem applicable shall be binding upon me/us and shall not place you or any of your correspondents under any resulting liability to me/us.
- 18) I/we acknowledge and regard all the promises, agreements and undertakings contained herein as binding notwithstanding any extension, renewal, renovation or modifications of any kind in the terms of the SBLC which you may have caused to be done at my/our request. And in the event of this application being signed by two or more parties, whether as partners or in the name of the firm or in any other capacity, each and all such parties signing shall be deemed JOINTLY and SEVERALLY liable thereunder.
- 19) I/we undertake that we will at our costs at your instructions commence (in my/our name, if necessary) and continue any court or arbitration proceedings in any jurisdiction in respect of any claim arising under the SBLC or any insurance policy issued in connection with the underlying goods. Without prejudice to the foregoing, we agree to extend to you all necessary co-operation in such proceedings, or in any proceedings which may be commenced by you in your name, including the attendance of witnesses and discovery of documents.
- 20) The agreement between you and me/us contained in or evidenced by the foregoing instructions, terms and conditions ("this agreement") shall be enforceable by and against the successors in title and assigns of the parties hereto. In particular, this agreement shall be binding upon the partners for the time being of any partnership which is party hereto notwithstanding any change in the members of the partnership after the date of entering into this agreement.
- 21) Any terms, interests, rights, benefits, defences, exemptions or limitations in this agreement shall not be enforceable by a third party pursuant to the Contracts (Rights of Third Parties) Act of Singapore.
- 22) This agreement is to be construed according to Singapore law. The parties thereto agree to submit to the non-exclusive jurisdiction of the Singapore courts in respect of any dispute arising out of or in connection with this application and/or the SBLC.