

# **GENERAL CONDITIONS**

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## Contents

<i>Agreement</i> .....	3
<i>The Bank's Obligations</i> .....	3
1.    Provision of Facilities .....	3
2.    Term of the Facilities .....	3
<i>Your Obligations</i> .....	3
3.    Repayment of the Facilities .....	3
4.    Conditions precedent .....	3
5.    Representations made by you .....	4
6.    Information .....	5
7.    Costs to paid by you .....	5
8.    Excesses and overdue amounts .....	6
<i>Review</i> .....	6
9.    Review of the Facilities .....	6
<i>Default</i> .....	8
10.   Default .....	8
11.   Consequences of default .....	9
The Bank's Options .....	10
<i>Payments</i> .....	10
12.   Payments generally .....	10
13.   No deductions from your payments .....	11
14.   Different Currencies .....	12
<i>Notices</i> .....	12
15.   Notices .....	12
<i>Waiver</i> .....	13
16.   Waiver .....	13
17.   Changes in government requirements .....	13
18.   Changes in the Law .....	13
19.   Law and Jurisdiction .....	13
20.   Existing Facilities .....	13
21.   Consolidation of Accounts .....	14
22.   Privacy and Confidentiality .....	14
23.   Statements .....	14
24.   Accounts Reconciliation .....	14
25.   Disruption to Service .....	15
26.   Error or Dispute Resolution Procedure .....	15
27.   If you are in Financial Difficulty .....	15
28.   Anti Money Laundering .....	15
29.   Drawing down or operating on Facilities .....	15
30.   Inconsistency .....	15
31.   Miscellaneous .....	15
<i>Interpreting this Agreement</i> .....	16
32.   Meanings of Words and Expressions .....	16
33.   Other Interpretation Provisions .....	18

This document contains important General Conditions which apply to your facilities.

It is important that you read and understand these General Conditions. If you do not understand, or are unsure about any aspect of these General Conditions, do not hesitate to ask us to clarify the matter for you.

## **Agreement**

These General Conditions are part of your agreement with the Bank. This Agreement consists of:

- (a) the Letter of Offer;
- (b) the conditions set out in this booklet;

## **The Bank's Obligations**

### **1. Provision of Facilities**

The Bank agrees to provide you with the facilities in accordance with this Agreement. The Bank agrees to do this in exchange for you carrying out your obligations under this Agreement.

### **2. Term of the Facilities**

The Bank will provide each facility for the agreed term unless:

- (a) you break your obligations under this Agreement or are in default and the Bank exercises its option to terminate a facility; or
- (b) there is a change in law that prevents the Bank from providing a facility.

**The agreed term** means:

- (a) if stated in the Letter of Offer, a specific term for the facility, being at least the period until that term has expired; or
- (b) if the Letter of Offer states that the facility is available until either or both (whichever occurs earlier) a review event or an event of default occurs, then at least until the Bank at its discretion gives you notice under clause 9(4) or clause 11(3); or
- (c) if the Letter of Offer says that the facility is "on demand", then for the period until the Bank demands payment.

**Note:** *Different facilities may be provided for different periods. Details of the period for which the Bank agrees to provide a particular facility is set out in our offer.*

## **Your Obligations**

### **3. Repayment of the Facilities**

For each facility, you agree to pay to the Bank at the end of the agreed term the outstanding money. You also agree to pay the Bank, at the end of the agreed term for each facility, all other amounts outstanding but unpaid under any transaction document.

### **4. Conditions precedent**

#### **What must be done before the Bank will make the Facilities available**

The Bank's obligation to make any of the facilities available to you is conditional upon the Bank being satisfied that:

- (a) **acceptance:** you have accepted the Bank's offer;
- (b) **no default:** no event of default or potential event of default has occurred and is continuing;
- (c) **securities:** the Bank has received the securities described in the Letter of Offer, properly completed and executed and legally enforceable (and, if a security is registrable, in registrable form), as well as all other documents needed to perfect the securities. (Note: if a guarantor is a company, or acts as a trustee, the Bank may also require some of the documents set out in clauses (e) or (f) in respect of the Guarantor).
- (d) **account authority:** the Bank has received an Account Authority;
- (e) **companies:** if you are a company, the Bank has received a copy of your certificate of incorporation, memorandum and articles of association, together with evidence satisfactory to the Bank that each of these documents is complete, correct, fully in force and has not been amended or revoked;

- (f) **partnership:** if you are a partnership, the Bank has received a copy of your partnership agreement and business registration certificate, together with evidence satisfactory to the Bank that each of these documents is complete, correct, fully in force and has not been amended or revoked;
- (g) **trust:** if you have entered into this agreement as a trustee of a trust, the Bank has received a copy of the trust deed together with evidence satisfactory to the Bank that each of these documents is complete, correct, fully in force and has not been amended or revoked;
- (h) **other conditions:** all other conditions precedent set out in the Letter of Offer have been fulfilled.

#### 5. Representations made by you

- (1) You represent that, on the date you accept the Bank's offer, each of the following statements is true:
  - (a) **transaction documents binding:** each of the transaction documents executed by you or a guarantor is binding on you or the guarantor, as applicable, and can be enforced against you or the guarantor in accordance with its terms;
  - (b) **no present default:** there is no default (that is material in the context of this agreement) by you or any of the guarantors under any other agreement, undertaking or instrument;

**Note:** *The agreement, undertaking or instrument need not be this agreement or an undertaking or instrument under it. It may be with someone other than the Bank.*

- (c) **no potential default:** nothing has happened that would become a default mentioned in paragraph (b) simply by notice being given or time elapsing;
- (d) **no undisclosed trust:** except as notified to the Bank in writing, neither you nor any of the guarantors is acting as trustee of a trust;
- (e) **no undisclosed encumbrances:** except as notified to the Bank in writing, there are no encumbrances over:
  - (i) your property; or
  - (ii) any guarantor's property over which a security has or will be given to the Bank;
- (f) **no undisclosed court cases:** except as notified to the Bank in writing, no litigation, arbitration or administrative proceeding exists or is pending, and you do not know of any which is threatened, that may have a material adverse effect on:
  - (i) your or a guarantor's business, assets or financial conditions; or
  - (ii) your or a guarantor's ability to perform obligations under any of the transaction documents;
- (g) **your financial statements:** your most recent annual financial statements:
  - (i) show a true and fair view of your financial condition and the results of your operations for the financial year that they cover;
  - (ii) disclose all material liabilities; and
  - (iii) if you are a company – comply with the law of Samoa and (except where inconsistent with those law) generally accepted accounting principles consistently applied in Samoa.

You also represent that there has been no material adverse change in your financial condition since the date of the financial statements.

- (h) **financial statements of certain guarantors:** for each corporate guarantor which is related to you, its most recent annual financial statements:
  - (i) show a true and fair view of its financial condition and the results of its operations for the financial year that they cover;
  - (ii) disclose all material liabilities; and
  - (iii) comply with the law in force in the jurisdiction where the Bank's office shown in the Letter of Offer is located and (except where inconsistent with the said law) generally accepted accounting principles consistently applied in that jurisdiction.

You also represent that there has been no material adverse change in the guarantor's financial condition since the date of the financial statements;

- (i) **full disclosure:** you have disclosed to the Bank all material matters that you know of which affect:

- (i) your or a Guarantor's business, assets or financial condition; or
- (ii) your or a Guarantor's ability to perform obligations under any of the transaction documents;
- (j) **no contravention:** your entering into this agreement, your executing any of the other transaction documents and carrying out your obligations under them will not contravene:
  - (i) a law or government requirement that applies to you or any of your property;
  - (ii) an authorisation, licence or exemption that applies to you or any of your property;
  - (iii) an agreement which binds you or any of your property;
  - (iv) if you are a company, any constitution or memorandum and articles of association of the company;
  - (v) if you are a partner, any partnership agreement; or
  - (vi) if you have entered into any transaction document as trustee of a trust, the trust deed of the trust.

You also represent that your execution of the documents will not give rise to a need for an authority, licence or exemption that you do not already hold;

- (k) **no contravention by guarantor:** the execution by a guarantor of any of the transaction documents and the carrying out of its obligations under them will not contravene:
  - (i) a law or government requirement that applies to or any of its property;
  - (ii) an authorisation, licence or exemption that applies to it or any of its property;
  - (iii) an agreement which binds it or any of its property;
  - (iv) if a company, its constitution or memorandum and articles of association of the company;
  - (v) if a partner, any partnership agreement; or
  - (vi) if it has provided any security as trustee of a trust, the trust deed for the trust.

You also represent that execution by a guarantor will not give rise to a need for an authority, licence or exemption that it does not already hold.

- (l) Each time you make a drawing under, or otherwise use, the facilities, you will be representing that, as at the time you make the drawing, or otherwise use the facilities, each of the statements set out in sub-clause (1) is true.
- (m) You agree to give the Bank prompt written notice if, after it was made or given to the Bank, a representation or statement made to the Bank or information given to the Bank ceases to be true or becomes misleading.

## **6. Information**

- (1) You agree to provide the Bank with any financial or other information it ask for by the time specified. The Bank agrees that it will only ask you for information which it considers relevant. You only need to provide the information to the Bank in writing, if the Bank asks for it to be in writing.
- (2) If you or a guarantor is a public company, you also agree to provide the Bank with all written information that you give to your shareholders (generally or to any class of them) or to a stock exchange, at the same time as you give it to them.

## **7. Costs to be paid by you**

- (1) You agree to pay the Bank, on demand, the amount of all our costs in connection with the transaction documents or transactions under this agreement.

This includes the Bank's costs in taking any action in connection with a transaction document, in particular:

- (a) negotiating, preparing, reviewing, amending, executing, stamping, registering and discharging a transaction document;
- (b) any government charges, fees and duties;
- (c) valuing anything that we require to be valued;
- (d) giving a consent; and

- (e) enforcing or protecting our rights under the transaction documents.
- (2) You agree to reimburse the Bank for costs and expenses incurred by it in relation to any of the matters referred to in clause 7(1) and any inquiry, notice or order by a government agency, (with respect to which the Bank considers it is obliged to comply) concerning:
  - (a) you or a guarantor or any past or present officer of yours or a guarantor;
  - (b) a transaction or activity of the subject of the transaction documents or in relation to which any financial accommodation or benefit is provided or to be provided under a transaction document, including reimbursement for our management time and expenses (which is to be charged at reasonable rates) and legal costs and expenses on a full indemnity basis. This clause survives the termination of this agreement or any facility under this agreement.

#### **Break consequences**

- (3) If the Bank's obligations in respect of a facility are terminated:
  - (a) before the termination date for any reason: or
  - (b) because the Bank's give you notice under clause 9(4) or clause 11(3),you agree to pay to the Bank the amount which the Bank determines is required to compensate the Bank for all costs which it may incur or losses which it may suffer, directly or indirectly including interest, because of termination.

#### **8. Excesses and overdue amounts**

- (1) You agree to pay the Bank interest on each amount (including interest) which:
  - (a) is in excess of a facility limit (an "excess"); or
  - (b) is not paid when it is due (an "overdue amount").
- (2) The interest rate for excesses and overdue amount is a rate determined by the Bank which may vary from time to time. Details can be found in your Letter of Offer.
- (3) Interest accrues daily from and including the day when:
  - (a) in the case of an excess, the excess first occurred until there is no longer an excess; or
  - (b) in the case of an overdue amount, the amount becomes due and payable until the amount is paid.
- (4) You agree to pay, on demand, any excess and any overdue amount.
- (5) You agree to pay the Bank, on demand, in addition to the interest payable under sub-clause (1), a fee determined by the Bank so that the interest and the fee will compensate the Bank for the costs it incurs or losses it suffers as a result of an excess and an overdue amount.

### ***Review***

#### **9. Review of the Facilities**

##### **Right of Review**

- (1) The Bank may review a facility when either or both (whichever occurs earlier) a review event or an event of default occurs. If the facility is provided for a specific term, the Bank can only make a change of the type which has been specifically reserved elsewhere in these General Conditions.  
*If the facility is provided until either or both (whichever occurs earlier) a review event or an event of default occurs or is on demand then the Bank can do the following:*
- (2) If, following a review the Bank determines there has been a change in credit, the Bank may give you a written notice stating that the Bank wishes:
  - (a) to agree to continue the facility subject to a change to any of the conditions. This right to change any of the conditions is in addition to the Bank's right to make specific changes reserved elsewhere in these General Conditions; or
  - (b) to terminate a facility, the Bank will give you at least 30 days notice, unless you agree to a shorter period.

**Note:** *Sub-clause (2) does not allow the Bank to do any of the following things unless you agree or unless you are in default:*

- (i) *alter the term of the facility;*

- (ii) change the conditions of the facility before the review date; or*
- (iii) change a condition of a facility, if the Bank has previously agreed with you in writing that the Bank will not change the condition (for example, if the Bank has agreed to a fixed rate of interest for a particular period, the Bank cannot change that fixed rate of interest for that period).*
- (3) If the Bank gives you notice that the Bank wishes to change any of the conditions of the facility provided to you, then unless the Bank agrees otherwise with you:
  - (a) the changes take effect from the day when you accept the changes; and
  - (b) if you do not accept the changes before the end of the notice period then, with effect from the end of the notice period, all the facilities become repayment on demand by the Bank.
- (4) If the Bank gives you notice under sub-clause (2) that the Bank wishes to terminate the facility, then termination takes effect at the end of the notice period. You must pay the Bank immediately upon termination the outstanding money under the facility, including any costs or losses determined under clause 7(3).

#### **The Bank's Rights under Other Clauses**

- (5) This clause does not affect the Bank's rights under any other clauses in these General Conditions including, but not limited to:
  - (a) the rights the Bank has if you are in default; or
  - (b) the rights the Bank has under clause 18;
  - (c) the Bank's right at any time to terminate immediately a Facility which is "on demand" by making a demand for payment.

#### **Review Events**

- (6) The Bank may review your facilities when it considers any of the following have occurred:
  - (a) there is a change in exchange rates or interest rates which may have a material effect on the profitability of your business;
  - (b) any change in ownership or control of your business;
  - (c) the Bank receives a request from you to pay preferential creditors;
  - (d) there is an increase or application to the Bank to increase facilities or for new Facility/ies;
  - (e) the Bank has dishonoured or refused payment of cheque(s) issued on any of your accounts because there are insufficient funds;
  - (f) the Bank receives a request from a guarantor of any of your facilities to be released from their obligations under the guarantee;
  - (g) any cheque for a material amount deposited to any of your accounts is dishonoured or payment is refused;
  - (h) there is a material change in the value of the security and/or the Bank receives a request to change the security provided in support of your facilities;
  - (i) the Bank is notified by law enforcement authorities of your alleged involvement in illegal activities;
  - (j) the occurrence of circumstances which may include matters such as the loss of a key supplier, the loss of a major customer, the loss of a tenant or diversification of activities which, in the Bank's opinion, are likely to result in a material deterioration in your financial position or profitability;
  - (k) an event occurs which is specified in the Letter of Offer to be a review event.

#### **Mandatory Legal or Financial Reporting Standards**

- (7) Irrespective of any other right under clause 9, the Bank may review the facilities (and the conditions on which they are made available) upon the commencement or implementation of any law or financial reporting standards (whether under any law in force Samoa or under any other law or requirement internationally) which the Bank must comply. The Bank will notify you of this review in writing and negotiate in good faith with you on the conditions (including pricing) of the facilities. If an acceptable agreement cannot be reached within 30 days on the terms and conditions for continuing the facilities, then you must repay the facilities in full within 90 days of receipt of written notice.

## **Default**

### **10. Default**

#### **Events of default for all customers**

- (1) You will be in default if any of the following things happen:
- (a) **failure to pay:** you fail to pay on time an amount that is due and payable by you under a transaction document;
  - (b) **securities become enforceable:** an event occurs that causes an encumbrance or a security given by you to become enforceable;
  - (c) **statements false or misleading:** a representation or statement made to the Bank or information given to the Bank (whenever it was made or given) in or in connection with the transaction documents was false or misleading (whether by omission or otherwise) when it was made or given;
  - (d) **other obligations not paid:** you fail to pay before the end of any grace period an amount that is due and payable to someone other than the Bank in respect of obligations relating to financial accommodation or financial arrangements;
  - (e) **acceleration of other obligations:** any obligation that you have becomes due and payable, or capable of being declared due and payable, before its stated maturity, but this does not include where it does so at your opinion;
  - (f) **transaction documents ineffective:** a provision of a transaction document:
    - (i) does not have effect, or ceases to have effect, in accordance with its terms; or
    - (ii) is or becomes void, voidable, illegal, invalid or unenforceable (but not simply because of the principles and rules of the common law or of equity that affect the creditors' rights generally);
  - (g) **distress or execution:** some or all of your property is seized by or on behalf of a creditor or under legal process;
  - (h) **ceasing business:** you stop, or threaten to stop, carrying on all or a material part of your business;
  - (i) **insolvency:**
    - (i) you suspend payment of your debts;
    - (ii) you are, or state you are, or are presumed by law to be, insolvent or unable to pay your debts; or
    - (iii) you take a step for the purpose of entering into a compromise or arrangement with any of your creditors or with any of your members;
  - (j) **facilities used for different purpose:** in the Bank's opinion, you use the financial accommodation provided under a facility for a purpose other than the purpose for which the Bank made it available;
  - (k) **change in circumstances:** circumstances arise that, in the Bank's opinion, may have a material adverse effect on:
    - (i) your business, assets or financial condition; or
    - (ii) your ability to perform your obligations under any transaction document;
  - (l) **other events specified in the Letter of Offer:** an event occurs which is specified in the Letter of Offer to be an event of default;
  - (m) **garnishee order:** a garnishee notice is given in respect of tax or other money you are said to owe;
  - (n) **failure to perform obligations:** you breach an obligation under a transaction document and either:
    - (i) the breach cannot be remedied; or
    - (ii) if it can be remedied, the Bank gives you a written notice requiring you to remedy it and, five business days later, it is still not remedied.



#### **Companies – additional events of default**

- (2) If you are a company, you will also be in default if any of the following things happen:
- (a) **winding up:** an application is made, a resolution is passed or an order is made for your winding up;
  - (b) **receivership:** a Receiver is appointed by the Court or pursuant to the law in force Samoa in respect of any of your property; or
  - (c) **maintenance of capital:** without the Bank's written consent, you pass a resolution or take a step:
    - (i) to give financial assistance, whether directly or indirectly, for the purpose of, or in connection with, an acquisition or proposed acquisition of:
      - (A) your shares or the shares of a company of which you are a subsidiary; or
      - (B) any right of interest in those shares;
    - (ii) to reduce your share capital;
    - (iii) to limit your ability to make calls on your uncalled share capital; or
    - (iv) to buy shares in yourself other than by redeeming redeemable preference shares.

#### **Individuals – additional events of default**

- (3) If you are an individual (including a partner), you will also be in default if any of the following things happen:
- (a) **act of bankruptcy:** you commit an act of bankruptcy;
  - (b) **bankruptcy notice:** a bankruptcy notice is issued against you;
  - (c) **bankrupt:** you become bankrupt; or
  - (d) **trustee appointed:** a trustee for creditors or in bankruptcy is appointed in respect of any of your property;

#### **Partnerships – additional events of default**

- (4) If you are a partnership, you will also be in default if any of the following things happen:
- (a) **change in partnership:** without the Bank's written consent, there is a change in the constitution of the partnership; or
  - (b) **dissolution of partnership:** without the Bank's written consent, the partnership is dissolved.

#### **Trustees – additional events of default**

- (5) If you entered into this agreement as a trustee of a trust, you will also be in default if any of the following things happen:
- (a) **trust not properly constituted:** the trust is held by a court not to have been properly constituted or you conceded that the trust has not been properly constituted;
  - (b) **termination of trust:** the trust terminates or the beneficiaries of the trust resolve to terminate it;
  - (c) **change of trustee:** you cease:
    - (i) to hold the trust property in your name; or
    - (ii) to be trustee;
  - (d) **breach of trust:** you commit a breach of trust which, in the Bank's opinion, is material.

#### **Guarantors**

- (6) Sub-clauses (1) to (5) inclusive (modified as necessary) apply to a guarantor. If a guarantor is in default, then you are in default.

#### **You will notify the Bank of a default**

- (7) You agree to notify the Bank in writing promptly if you are in default or a potential event of default occurs.

#### **11. Consequences of default**

### **The Bank's Options**

- (1) If you are in default, the Bank may waive the rights that it has.
- (2) If you are in default, the Bank may do any one or more of the following:
  - (a) terminate immediately some or all of the Bank's obligations under this agreement;
  - (b) change immediately some or all of the conditions on which one or more of the facilities are made available (in particular, the Bank may cancel an unused facility limit by reducing the facility limit for the facility or we may make the facility "on demand");
  - (c) make some or all of the money that is or may become owing to the Bank in respect of one or more of the facilities immediately due and payable to the Bank (this includes the face value of all outstanding bills); and
  - (d) require you to provide the Bank with enough cash to cover the Bank for any contingent liabilities the Bank may have under a facility (for example, a contingent liability under a Letter of Credit).
- (3) The Bank will give you written notice after acting under sub-clause (2)(a) or (b).
- (4) The Bank will give you written notice before acting under sub-clauses (2)(c) or (d). The notice is effective immediately when the Bank gives it.

### **You agree to compensate the Bank for losses caused by defaults**

- (5) You agree to pay the Bank, on demand, the amount of all the costs the Bank incurs, and the losses it suffers, because of, or in connection with, an event of default. Without limiting what this amount may be, it includes whatever amount the Bank determines is needed to compensate the Bank for costs incurred or losses suffered because of:
  - (a) early payment of amounts outstanding; or
  - (b) failure to roll a bill.

The Bank will take into account any benefit that, in the Bank's opinion, the Bank will get because of the early payment or the failure.

### **Defaults affect other agreements with the Bank**

- (6) You agree that an event of default under this agreement is an event of default or an acceleration event under all other agreements that you have with the Bank.

For example: this sub-clause applies to default under a security.

This sub-clause applies despite anything in the other agreement.

## **Payments**

### **12. Payments generally**

#### **Payments need to be cleared**

- (1) Every payment you make to the Bank will be in immediately available funds.
- (2) We reserve the right to determine at our sole discretion the order of how payments are applied to your account(s).

#### **Due date for payment not a business day**

- (3) Unless this agreement provides otherwise, if the due date for a payment is not a business day, the amount is payable on the preceding business day. Where the due falls on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> of a month which does not contain such a date, the payment will be due on the last day of that month.

#### **The Bank may make payments from your account to the Bank**

- (4) This agreement provides for certain payments to be made. You authorise the Bank to debit any of your accounts with any amount payable by you under this agreement. The Bank may debit an amount to your account without making a demand even though another provision of this agreement says that the amount is payable on demand. However, the Bank does not have to debit your account and the Bank may ask you to pay the amount to it. If the Bank debits your account, the Bank will give you written notice that it has done this.

**Note:** For example, clause 7(1) of this agreement requires you to pay on demand certain costs incurred (such as stamp duty and registration fees on securities). Clause 12(4) allows the Bank to debit

*stamp duty to your account without having to serve a formal demand. Other amounts which may be debited to your account include interest which is due on a facility or money payable on a bill roll-over.*

**The Bank may change the time for payment of interest**

- (5) The Bank may, at any time, change when, how often and how you will pay the Bank interest under any of the facilities.

**Note:** *If the Bank makes a change of this kind, the Bank will give notice of the change before it happens. The Bank will do this by giving you written notice no later than 30 days before the change takes effect.*

**Changes to Interest Rates**

- (6) **Variable Rate Facilities:** the Bank has the right to review its interest rates from time to time to reflect its view of market conditions. This means that the interest rate for your facility can be increased or decreased by the Bank from time to time. The Bank may also change the interest rate for excesses and overdue amounts.

When there is a change in the interest rate, the Bank will advertise the new rate or notify you in writing no later than the day of the change. If the interest rate change is notified to you by advertisement, a note recording the change and the new rate will be shown on the next statement which is issued for your facility.

- (7) **Fixed Rate Facilities:** the interest rate which will apply to your fixed rate facility will not be changed during the fixed rate period of the facility. The Bank has the right to review the interest margin once your fixed interest rate period has ended. The interest margin will be reviewed and may be varied at the review of your facility.

**Changes to fees and charges**

- (8) The Bank may introduce new fees and charges for facilities. Any new fee or charge will be notified to you in writing no later than 30 days before the change takes effect.

The Bank may also change existing fees or charges as well as when, how often and how you will pay them. Any change will be notified to you no later than the day on which the change takes effect by an advertisement in a major or national daily newspaper or notice will be given to you in writing.

**Changes to other Terms and Conditions**

- (9) The Bank may change any of the names of any of its interest rates, facilities or publications or any other condition of your facility. Any change will be notified to you no later than the day on which the change takes effect by an advertisement in major or national daily newspapers or notice will be given to you in writing.

**The Bank will provide you with information on current interest rates and standard fees and charges**

- (10) Information on current interest rates and the Bank's standard fees and charges will be made available to you on request from your Relationship Manager.

**Repayment to the Facility by cheque**

- (11) If you are able to make a repayment to your facility by cheque, and the cheque is dishonoured, the repayment will be treated as not having been made and interest will continue to accrue on the unpaid daily balance until actual payment is received by the Bank.

**13. No deductions from your payments**

**Payments will be made without deductions**

- (1) To the maximum extent that the law allows, you agree to make each payment to the Bank under this agreement without any:
- (a) set-off or counterclaim;
  - (b) deduction; or
  - (c) withholding for or on account of tax or duty.

**If withholding tax or other deductions are made**

- (2) You agree that, if a law requires you to make a deduction or withholding for on account of tax or duty (other than any imposed on our overall net income) from a payment to us:

- (a) you will pay the Bank, when the payment is due, whatever additional amount is needed so that what the Bank actually receives, after taking into account that deduction or withholding, is what the Bank could have been entitled to receive if no deduction or withholding had been made;
- (b) you will indemnify the Bank against any loss the Bank suffers or cost the Bank incurs because you do not make the deduction or withholding; and
- (c) you will promptly give the Bank a copy of any document relating to the amounts paid or payable in respect of the deduction or withholding.

#### **14. Different Currencies**

- (1) Unless a transaction document provides otherwise, all payments made under or for the purposes of this agreement or another transaction document must be made in Samoan Tala.
- (2) Where conversion of one currency to another is required, the Bank will apply its standard procedures for currency conversion.

#### **If you must make a payment in a different currency**

- (3) This sub-clause applies if, because of a law, an order of a court or for any other reason, a payment under this agreement or another transaction document must be made in a currency other than the currency in which it is required to be paid under the relevant transaction document.

If the amount paid in the other currency, when converted by the Bank into the currency in which it is required to be paid under the relevant transaction document, falls short of the amount due and payable under the relevant transaction document, you agree to pay the Bank, on demand, the amount of the shortfall.

The amount to be paid will be determined:

- (a) on the day when the payment is actually made; or
- (b) if the payment is made in the case of a winding up, bankruptcy or other insolvency administration – the date fixed by the relevant law for the determination of claims.

Your obligation to make this payment is separate from and independent of your other obligations under this agreement or the other transaction documents.

### ***Notices***

#### **15. Notices**

##### **How the Bank gives you notice**

- (1) A notice or demand that the Bank gives to you under this agreement or the other transaction documents will be signed by one of the Bank's managers or by our solicitors.
- (2) The Bank may give you a notice or demand under this agreement or the other transaction documents by leaving it at your address or by posting it to you. Your address is that shown in the Letter of Offer or the last address maintained in the Bank's records.
- (3) A notice or demand that the Bank gives you for the purposes of this agreement or the other transaction documents will be given and received:
  - (a) if left at your address by the Bank as per sub-clause (2) – when left; or
  - (b) if posted to your address as per sub-clause (2) – on the second business day after posting.

##### **How you give the Bank notices**

- (4) A notice that you give to the Bank under this agreement or the other transaction documents must be signed by you or by your authorised representative.
- (5) You may give the Bank a notice under this agreement or the other transaction documents by leaving it or by posting to the Bank's address. The Bank's address is that shown in the Letter of Offer or some other address that the Bank has given you written notice of. Your notice will be effective when the Bank receives it.
- (6) If you give the Bank notice that is expressed to be, or must be read as, irrevocable, you are not able to revoke it and it binds you from the time you give it.
- (7) Notwithstanding anything contained in this agreement, the Bank may act in accordance with any instruction in relation to a drawing or in relation to anything else under or in connection with this

agreement given, or purporting to be given to the Bank, orally or in writing, by you or your authorised representative. You agree that, if the Bank acts in accordance with an instruction given in this way, the Bank's act is done with your authority.

## **Waiver**

### **16. Waiver**

The rights that the Bank has under the transaction documents cannot be waived except by the Bank giving you written notice waiving the particular right.

In particular:

- (a) the Bank does not waive any right that the Bank has in connection with this agreement merely because the Bank does not exercise it, or does not exercise it as soon as it can; and
- (b) if the Bank exercise a right once or partly, it does not mean that the Bank cannot exercise that right again or other rights.

### **17. Changes in government requirements**

- (1) This clause applies if:
  - (a) after the date of the Letter of Offer, there is:
    - (i) a change in government requirement for a new government requirement;
    - (ii) a change in a tax or a new tax; or
    - (iii) a change in the interpretation of a government requirement or a tax that affects facilities of the kind contemplated in the Letter of Offer; and
  - (b) its effect is, in the Bank's opinion, directly or indirectly:
    - (i) to increase the cost to the Bank of providing or maintaining the facility or of providing funds under it; or
    - (ii) to reduce the effective rate of return to the Bank (whether on capital, assets, deposits or otherwise) on the facility. For the purposes of this clause 'tax' includes duties but does not include a tax on the Bank's net income in the normal course of the Bank's business.
  - (c) You agree to the Bank, on demand, the amount calculated by the Bank as necessary to compensate the Bank for the increase in cost or reduction in rate. The amount payable will be calculated by the Bank from the day when it first incurred the costs or suffered the reduction.

### **18. Changes in the Law**

If the Bank gives you notice, in the Bank's opinion it has become illegal in a jurisdiction or otherwise impracticable for the Bank to continue to make a facility available, the Bank's obligations in relation to the facility will terminate.

Such a situation could arise because of:

- (a) a change in a government requirement or a new government requirement;
- (b) change in the law, written or unwritten, or a new law; or
- (c) a change in the interpretation of a government requirement or law.

### **19. Law and Jurisdiction**

- (1) This agreement is governed by the law in force Samoa.
- (2) In relation to any proceedings about or in connection with the transaction documents, the Bank and you agree to submit to the non-exclusive jurisdiction of the courts that have jurisdiction under that law.

### **20. Existing Facilities**

- (1) This clause only applies if the Bank is already making facilities available to you at the date of the new Letter of Offer;
- (2) The arrangements for the facilities that the Bank is making available to you at the date of the Letter of Offer, including the conditions on which those facilities are being made available, (the 'existing arrangements') continue until both of the following things happen:
  - (a) you accept the Bank's new Offer; and

- (b) everything that must be done before the Bank will make the new facilities available in accordance with the Letter of Offer has been done to the Bank's satisfaction.

In particular, until both of the above things happen, the Bank is still able to exercise the rights that the Bank has under the existing arrangements, including the right to terminate, or vary the conditions of, the existing facilities.

- (3) When both of the things referred to in sub-clause (2)(a) and (b) have happened, the conditions of the existing facilities will from that time onwards be those contained or referred to in this agreement.

However:

- (i) this agreement does not replace any security, guarantee, authority, power or indemnity in force at the date of the Letter of Offer (these documents and their provisions are not affected in any way); and
- (ii) if the Letter of Offer says that some or all of the conditions of an existing facility are not to be changed, those conditions will not be replaced by the conditions of this agreement.

### **21. Consolidation of Accounts**

The Bank may at any time combine, consolidate, merge or apply any credit balance in any of your accounts, or any amount available to the Bank by way of set-off, lien or counterclaim, towards payment of money which is then, or will become, due and payable by you to the Bank under any transaction document. If the Bank does any of these things, the Bank will tell you in writing. The Bank can do any of these things despite any previous agreement to the contrary. You authorise the Bank to do anything in your name which is necessary for the Bank to be able to do any of these things.

The Bank's rights under this clause are in addition to any other rights it has at law or under any other agreement.

### **22. Privacy and Confidentiality**

In dealing with the Bank, the Bank is likely to collect your information to enable the Bank to provide a product or service to you. If you do not provide some or all of the information requested, the Bank may be unable to provide you with the product or service. By accepting the Bank's offer to provide the facility/ies set out in the Letter of Offer, you agree that the Bank may use and disclose your information:

- (a) to enable the Bank to provide the facility/ies to you, or help the Bank provide or tell you about other products or services offered by the Bank which may interest you;
- (b) to Australia and New Zealand Banking Group Limited ABN 11 005 357 522 and its related companies (including subsidiaries) (**collectively known as "ANZ"**) for internal and administrative and operational purposes (including but not limited to risk management, systems development and testing, credit scoring, staff training, and market or customer satisfaction research);
- (c) to your referee(s) and/or guarantor (and any intending guarantor);
- (d) to other banks or financial institutions;
- (e) to credit reporting or debt collecting agencies, any outsourced provider, agents, contractors or advisers which the Bank or ANZ engages to carry out its functions and activities, the Bank or ANZ's alliance partners, and to other parties authorised and/or required by law to collect your information.

### **23. Statements**

In relation to accounts for which the Bank would normally issue statements, the Bank will issue statements as agreed between you and the Bank.

### **24. Accounts Reconciliation**

You must review and reconcile your records in respect of each account held with the Bank within 7, 14, 21 or 30 days (as arranged between you and the Bank) after receiving your statement of account and notify us immediately if:

- (a) there has been any alleged omission from, or debits wrongly made to, an account; or
- (b) any unauthorised transaction has been effected in respect of an account.

Except to the extent:

- (a) notified by you pursuant to this clause 24; or
- (b) any bank fees or charges incorrectly debited or credited by the Bank, all entries in the statement of account at the end of that 7, 14, 21 or 30 days shall be conclusive evidence without further proof

that they are correct and complete and the Bank shall be free from all claims in respect of such accounts.

#### **25. Disruption to Service**

A disruption is where a service is temporarily unavailable or where a system or equipment fails to function in a normal or satisfactory manner.

To the maximum extent permitted by law, the Bank will only be liable for loss or damage suffered because of a disruption where that disruption is caused by an event within the Bank's reasonable control. The Bank will not be liable for consequential loss or damage because of such disruption. This disclaimer is in addition to, and does not restrict, any other provision contained in these General Conditions which limits the Bank's liability.

#### **26. Error or Dispute Resolution Procedure**

If you believe that an error has occurred in any transaction, you should contact your Relationship Manager or Product Specialist, or visit the Bank's nearest branch.

#### **27. If you are in Financial Difficulty**

You should inform the Bank as soon as possible if you are in financial difficulty. The Bank, with your agreement, may assist you to overcome your difficulties with your facility, including for example, developing a repayment plan.

#### **28. Anti Money Laundering**

You agree that the Bank may (and will incur no liability to you if it does) delay or refuse to process any transaction if the Bank believes on reasonable grounds that:

- (a) the transaction may breach any law in force in Samoa or any other country; or
- (b) directly or indirectly involve the proceeds of unlawful conduct; or
- (c) the Bank is unable to satisfy itself as to the origin of funds.

Any funds which the Bank refuses to process may be refunded to the depositor or the remitting financial institution as determined by the Bank.

You agree to provide all information to the Bank which the Bank reasonably requires to comply with any law in force in Samoa or any other country. You agree the Bank may disclose your information and/or make reports to law enforcement agencies or regulators for the purpose of complying with any law in Samoa or any other country.

Unless you have disclosed that you are acting on behalf of another party, you warrant that you and your authorised representative(s) are acting on your behalf in opening your account, entering into this agreement, and conducting any transactions on your account.

You declare and undertake to the Bank that the payment of monies in accordance your instructions by the Bank will not breach any law in force in Samoa or any other country.

#### **29. Drawing down or operating on Facilities**

The law requires that all account owners and signatories be properly identified. Some facilities may be provided that are not associated with an account. For the purposes of this clause, facilities provided without an associated account will be regarded as accounts. Before you drawdown or operate on facilities the Bank will, if you have not previously been identified by the Bank, require you to provide documents or identification to verify your identity.

#### **30. Inconsistency**

- (1) If there is an inconsistency between the Letter of Offer and either these General Conditions, the Letter of Offer prevails;
- (2) If there is an inconsistency between this agreement and a security, this agreement prevails.

#### **31. Miscellaneous**

- (1) Any obligation that you have under this agreement to pay the Bank amounts of money as costs, or on account of a loss that the Bank may have suffered, is a continuing and independent obligation and survives even if this agreement is terminated.

- (2) You agree that the Bank's written determination of any amount in connection with this agreement (including a determination of how much you own the Bank at a particular time) is conclusive unless there has been a manifest error.
- (3) You consent to the Bank giving information which you provide to the Bank or which the Bank has about you (including a copy of this agreement or part of it) to anyone who is:
  - (a) a guarantor or an assignee; or
  - (b) considering becoming one.
- (4) If, in any jurisdiction, a provision of this agreement is illegal or unenforceable, this agreement is to 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.
- (5) You may not transfer of any of your rights or obligations under the transaction documents unless the Bank consents in writing. The Bank may transfer any of its rights or obligations under the transaction documents.

### ***Interpreting this Agreement***

#### **32. Meanings of Words and Expressions**

- (1) In this agreement, unless the context otherwise requires:

**"acceleration event"** means an event which, if it happens, results in money becoming due and payable to the Bank immediately under another agreement that you have with the Bank;

**"account authority"** means an authority that appoints your authorised representative, given by you in a form acceptable to the Bank;

**"the Bank"** means ANZ Bank (Samoa) Ltd and its successors and assigns;

**"bill"** means a bill of exchange;

**"business day"** means, for a payment or a drawing which is required under the facility is to be made in a place other than the Bank's office shown in the Letter of Offer, a day on which the Bank's office in the place where the payment or drawing is to be made is open for general banking business. Otherwise, a day on which the Bank's office shown in the Letter of Offer, is open for general banking business.

**"change in credit"** a change in credit occurs if, following a credit re-assessment:

- (a) the Bank would only prepared to provide any one or more of the facilities on different conditions from those on which it or they are provided at the time of the credit re-assessment; or
- (b) the Bank would not be prepared to provide a particular facility;

**"company"** has the same meaning as defined in the relevant company law in force in Samoa:

**"condition"** in relation to a facility, means any provision of this agreement;

**"costs"** include for example:

- (a) the Bank's charges and commissions;
- (b) expenses;
- (c) fees;
- (d) taxes or duties;
- (e) legal costs (calculated on a full indemnity basis) for this agreement or transactions under this agreement;

**"credit re-assessment"** means an assessment of the facilities made by the Bank:

- (a) applying the Bank's then current criteria for assessing applications for the provision of the facilities; and
- (b) as if the Bank were assessing a new application at the that time by you for the provision of the facilities;

**"customer"** means, in relation to a facility, the person named as the customer in the Letter of Offer and includes the person's executors, administrators, successors and permitted transferees;

**"drawdown date"** means the day on which a drawing is, or is proposed to be, provided to you under this agreement;



**"drawing"** means financial accommodation provided or to be provided to you under any of the facilities and "to make a drawing" and similar expressions means to obtain financial accommodation under any of the facilities;

**"encumbrance"** means:

- (a) any right or interest of any kind given by way of security (including, for example, a mortgage, pledge, lien, charge or assignment);
- (b) any other arrangement (including any preferential, trust, title retention or set-off arrangement) having a similar commercial effect as a grant of security; or
- (c) a guarantee or indemnity;

**"event of default"** means any of the circumstances described in clause 10 of these General Conditions;

**"facility"** means any of the facilities or loans which the Bank makes available under this agreement;

**"facility limit"** means the amount specified as the facility limit in the Letter of Offer;

**"financial statements"**

(a) of a company includes:

- (i) its balance sheet and profit and loss account for each financial year; and
- (ii) any other document that any relevant companies law in force Samoa requires it to be prepared;

The financial statements must be certified by a director of the company as giving a true and fair view of its financial condition as at the end of the financial year and the results of its operations for that financial year.

- (b) of an individual means a statement of financial position signed by the individual, in a form satisfactory to the Bank, describing his or her present assets and liabilities and setting out an income and expenditure budget for the following year;
- (c) of a partnership means the partnership accounts, certified by two partners as giving a true and fair view of the financial condition of the partnership as at the end of the financial year, together with copies of the partnership income tax return for the previous financial year;

**"garnishee"** means a person (including the Bank) who:

- (a) holds, or may hold, money for you or on your account; or
- (b) owes, or may owe, you money.

**"garnishee notice"** means a notice which is validly given to a garnishee under any law which requires a garnishee to deal with money in accordance with the notice regardless of any contrary direction which you may give;

**"government agency"** means:

- (a) a government or government department or other body;
- (b) a government, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) charged with the administration of a law;

**"government requirement"** means a law, or a direction or requirement, whether it has the force of law or not, imposed by the central bank of Samoa or a government agency in Samoa or a similar body in a foreign country;

**"guarantor"** means a person who has given, gives or is to give a security and includes the person's executors, administrators, successors and transferees;

**"instruction"** includes:

- (a) a notice;
- (b) a request; and
- (c) an acceptance (including an acceptance of additional or varied facilities)

**"offer"** means the Bank's offer in the Letter of Offer;

**"outstanding money"** for a particular facility, means the amount (without converting the currency in which it is expressed) actually or contingently owing by you to the Bank under the facility and includes interest and costs;

**"potential event of default"** means circumstances that will become an event of default simply by the passing of time or if some notice is given;

**"review event"** means any of the circumstances described in clause 9(6) of these General Conditions;

**"security"** for your obligations (whether under this agreement or not) and which has been given to the Bank previously or will be given to the Bank in the future means:

- (a) any right or interest of any kind given by way of security (including, for example, a mortgage, pledge, lien, charge or assignment);
- (b) any other arrangement (including any preferential, trust, title retention or se-off having a similar commercial effect as a grant of security); or
- (c) a guarantee or indemnity;

**"termination date"** or **"term of the facility"** for a facility means:

- (a) the termination date for the facility set out in the Letter of Offer; or
- (b) the day when the Bank terminate its obligations in relation to the facility under this agreement;

**"this agreement"** means the agreement constituted by your acceptance of the Bank's offer;

**"transaction document"** means any of the following:

- (a) the Letter of Offer;
- (b) these General Conditions;
- (c) the securities; and
- (d) any other document required in connection with this agreement and also means any documents or agreements that amend any of these or replace them;

**"us"** and **"we"** mean the Bank;

**"you"** means the customer; and

**"your authorised representative"** means, at a particular time, a person authorised by you, in the most recent Account Authority that you have given to the Bank, to act on your behalf for all dealings, matters and transactions with the Bank.

### **Provisions about Companies**

- (2) For the purposes of this agreement "subsidiary" and "wholly-owned subsidiary" have the same meanings as that defined under the relevant company law in force in Samoa, and that law will be applied to determine whether one company is related to another.

### **If the facilities are in the name of more than one person**

- (3) The liability of those persons under this agreement is joint and several; and
- (4) A reference to "you" or "your" includes a reference to each of those persons individually and to any two or more of them together.

### **Words and Expressions defined elsewhere**

- (5) Despite sub-clauses (1) to (4), words and expressions defined in the Letter of Offer for a facility have the meanings they have in the Letter of Offer, whichever is relevant.

### **33. Other Interpretation Provisions**

- (1) A reference to an individual or person includes a reference to a company and vice versa;
- (2) The singular includes the plural and vice versa;
- (3) A reference to an agreement, a document or a law is a reference to the agreement, document or law (and, if applicable, any of its provisions), as amended, novated, supplemented or replaced for the time being.

*(For example: where the Bank's original Letter of Offer has subsequently been varied, a reference in any of the transaction documents to the Letter of Offer means the Letter of Offer as varied).*

- (4) A schedule to a document is a part of the document;
- (5) Section, clause and other headings and notes are not part of this agreement, they are for convenience only;

- (6) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.