

# Commodity Trade Finance Terms and Conditions

## 1. SCOPE, INTERPRETATION AND AMENDMENT

### 1.1. Scope.

- (a) These Commodity Trade Finance Terms and Conditions (the “**CTF Terms**”) apply to any Accommodation that TradeXBank AG (the “**Bank**”) extends to its trade finance customers, including but not limited to those that have entered into or adhered to the Master Agreement (“**Customer**”).
- (b) These CTF Terms also apply to any Accommodation granted in excess or in deviation of the limits and terms set forth in the Limit Letter or these CTF Terms.
- (c) These CTF Terms also apply to any Loan, Documentary Instrument or other Accommodation that was disbursed, issued or entered into without formal completion of the Utilisation Request procedure as per Clause 3 (*Utilisation*).

**1.2. Definitions.** The terms defined in Clause 28 (*Definitions*) have the meaning specified therein. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document will have the same meaning in that Finance Document or notice as in these CTF Terms.

**1.3. Hierarchy of Documentation.** In the event of any inconsistency:

- (a) between the provisions of (i) the CTF Terms and (ii) the Master Agreement or the Pledge and Assignment Agreement, the provisions of the Master Agreement or the Pledge and Assignment Agreement (as the case

may be) shall prevail.

- (b) between the provisions of (i) the CTF Terms, the Master Agreement or the Pledge and Assignment Agreement and (ii) the Limit Letter, the provisions of the Limit Letter shall prevail;
- (c) between the provisions of (i) the CTF Terms, the Master Agreement or the Pledge and Assignment Agreement or the Limit Letter and (ii) a Utilisation Request accepted by the Bank, the provisions of that Utilisation Request shall prevail for the purposes of the transaction purported by that Utilisation Request;
- (d) between the provisions of (i) the Master Agreement and (ii) the Pledge and Assignment Agreement, the provisions of the Pledge and Assignment Agreement shall prevail.

**1.4. Single Agreement.** All Accommodations are provided hereunder in reliance on the fact that these CTF Terms, and all Utilisation Requests accepted by the Bank, in conjunction with the Finance Documents, form a single agreement between the Parties.

**1.5. Construction.**

- (a) Unless a contrary indication appears, any reference in these CTF Terms to (i) a Clause is a reference to a clause of these CTF Terms; (ii) a time of day is a reference to Zurich time; (iii) an outstanding amount of a Documentary Instrument at any time is the maximum amount that is or may be payable by the Bank to the Beneficiary under that Documentary Instrument at that time, or that constitutes the Bank’s maximum exposure thereunder; (iv) the Customer’s

obligations under a Documentary Instrument means reimbursement and indemnity obligations of that Customer in respect of such Documentary Instrument; (v) amounts payable pursuant to a Finance Document include any Cash Cover amounts to be provided by the Customer.

- (b) Unless the context otherwise requires, (i) words denoting the singular include the plural and vice versa, (ii) all clarifications, such “including”, “e.g.”, etc. are given by way of example, and not by way of limitation.

#### 1.6. *Currency symbols and definitions.*

- (a) “CHF” and “francs” denote the lawful currency of Switzerland.
- (b) “€”, “EUR” and “euro” denote the single currency of the participating member states of the European Union.
- (c) “\$”, “USD” and “dollars” denote the lawful currency of the United States of America.
- (d) “£”, “GBP” and “sterling” denote the lawful currency of the United Kingdom.

#### 1.7. *Amendment.*

- (a) The Bank may amend the CTF Terms unilaterally at its sole discretion. The amended CTF Terms take effect as from the date designated by the Bank and apply to all outstanding Accommodations.
- (b) The Customer shall be informed of changes by circular letter or by another appropriate means, including by a publication on the Bank’s Internet site.
- (c) The Bank will endeavour to publish the amendments at least one month prior to the effective date, but a shorter notice shall not delay the effective date of the amendments.

## 2. **THE UNCOMMITTED FACILITY**

### 2.1. *The Facility.*

- (a) Subject to the provisions of these CTF Terms, the Bank may make available to

the Customer a revolving facility (the “Facility”) for various Accommodations, on terms and conditions, including the Limits, as stipulated in the Limit Letter.

- (b) The Facility is available by Loans, by issuance of Documentary Instruments and by other Accommodations the Bank may from time to time agree to provide.

### 2.2. *Limit Letter und utilisation.*

- (a) The “Limit Letter” sets out the Limits applicable to the Facility and other various conditions (including fees, commissions, interest rates, etc).
- (b) The Parties expressly agree that the Bank is entitled, at its sole discretion and at any time, to change the conditions of the Limit Letter (sending a new Limit Letter to the Customer as applicable), including the addition of new Limits or modification or termination of existing ones (including the change of their amounts) without the consent of the Customer. Outstanding Accommodations are however not affected by revocation or modification of the Limit Letter.
- (c) The principal amount outstanding under the Facility, shall not exceed the applicable Limits.
- (d) Any Accommodation provided shall reduce the Limit available under the Facility.
- (e) If at any time the Bank determines that a Limit is exceeded, the Customer shall, on demand after being given notice by the Bank, prepay and/or provide Cash Cover and/or terminate one or more Accommodations (or part thereof) so that such excess is eliminated.

2.3. *Uncommitted nature.* The Customer acknowledges and agrees that the Facility is uncommitted, and Loans, Documentary Instruments and other Accommodations are disbursed, granted or issued, or entered into upon the Customer’s request by the Bank on

an uncommitted basis and are available at the Bank's sole and unrestricted discretion, and that the Bank is until actual disbursement, granting or issuance, or entry into under no obligation to provide any financing or to issue any instrument or to renew or amend any of the Facility or Accommodation or to enter into any other facility, without having to justify any refusal.

**2.4. Purpose.** The Customer shall request and use Loans and Documentary Instruments and other Accommodations in connection with its Transactions. The Bank is not bound to monitor or verify the application of any amount borrowed or utilised by the Customer, though is entitled to do so.

### **3. UTILISATION**

**3.1. Conditions precedent to utilisation.** No Utilisation Request shall be delivered unless the Bank has received the following documents in form and substance satisfactory to the Bank:

- (a) executed Finance Documents (and, where required, duly notarized or registered or any other formality being completed in order to ensure enforceability of the Finance Documents);
- (b) corporate authorisations in form and substance satisfactory to the Bank, if required;
- (c) legal opinions in relation to each Obligor in form and substance satisfactory to the Bank, if required;
- (d) reimbursement of legal fees and expenses to the Bank, if required;
- (e) satisfactory due diligence by the Bank, including documentation and information in respect of "know your customer" requirements;
- (f) completion of the account opening process with the Bank; and
- (g) any further document the Bank may require.

**3.2. Utilisation Request.**

- (a) The Customer may request a Loan or Documentary Instrument by

delivering a duly completed Utilisation Request to the Bank.

- (b) Only one Loan or Documentary Instrument may be requested in each Utilisation Request.

**3.3. Acceptance.**

- (a) The Bank has the sole and unrestricted discretion whether to accept a Utilisation Request or not and may reject it without having to justify any refusal.
- (b) A Utilisation Request shall be deemed accepted by the Bank only if and when the Bank explicitly accepts it by providing the Accommodation requested (financing or issuance of a Documentary Instrument, etc.) on terms of the Utilisation Request.

**3.4. Issuance of Documentary Instruments.**

- (a) By virtue of the Utilisation Request the Customer authorises the Bank, without further notice to or consent by the Customer, to either issue (or arrange for the issue of a Documentary Instrument through an intermediary bank that the Bank may deem appropriate) the Documentary Instrument directly to the Beneficiary or to such bank (which is acceptable to the Bank) as requested by the Customer.
- (b) If a Documentary Instrument is issued by an intermediary bank, the Bank is authorised and directed by the Customer to issue its counter-guarantee or a similar instrument to the intermediary bank under terms and conditions conforming to the Utilisation Request and under such further terms and conditions (which do not conflict with the relevant Utilisation Request) as the intermediary bank may require and the Bank may reasonably deem customary or appropriate. Such counter-guarantee or similar instrument issued by the Bank shall for all purposes be deemed to be a Documentary Instrument subject to the terms and conditions of these CTF Terms.

- (c) By virtue of the Utilisation Request the Customer authorises and directs the Bank to bind itself either individually or as a joint and several obligor under the Documentary Instrument, whether or not payable at the Beneficiary's first demand, under such terms and conditions (which do not conflict with the relevant Utilisation Request) as the Bank may reasonably deem customary or appropriate.
- (d) Subject to the provisions of these CTF Terms, Documentary Instruments shall be issued by the Bank substantially in the form, terms and conditions annexed to the respective Utilisation Requests. In the event the Bank determines that it cannot, for any reason, issue a Documentary Instrument substantially in the form, terms and conditions annexed to the respective Utilisation Request, the Bank shall on a best efforts basis notify the Customer accordingly.
- (e) If required to do so by any intermediary bank issuing a Documentary Instrument against a counter-guarantee of the Bank, the Bank may bind itself to pay at first demand whether or not the Beneficiary requires such undertaking.
- (f) The Bank may issue a Documentary Instrument in the form of a SWIFT message or other form of communication customary in the relevant market but has no obligation to do so.

**3.5. Automatic utilisation.** Where the Bank agrees (or at its sole discretion decides) to finance a drawing under a Documentary Instrument or a payment under or in connection with an Accommodation (e.g. a margin call) as a Loan, such Loan will be granted without a Utilisation Request on terms agreed with the Customer or reasonably determined by the Bank.

**3.6. Revaluation.**

- (a) If any Loan or Documentary Instrument is denominated in a currency different from the Base

Currency, the Bank will on a daily basis establish the Base Currency Amount of each such Loan or Documentary Instrument by notionally converting into the Base Currency the outstanding amount of that Loan or Documentary Instrument on the basis of the Bank's Spot Rate of Exchange on the date of calculation.

- (b) If an individual or aggregate Base Currency Amount of any Loans or Documentary Instruments exceeds any applicable Limit, the Customer shall, as requested by the Bank, within 3 (three) Business Days (i) repay the outstanding Loans so that the excess is cured, and/or (ii) provide additional Cash Cover to cover the excess.

**4. REPAYMENT AND ROLLOVER OF LOANS**

**4.1. Repayment of Loans.** Unless agreed differently and subject to the Limit Letter, the Customer shall repay each Loan on the earlier of (the "Loan Maturity Date"):

- (a) the applicable Repayment Date;
- (b) on the last day of the applicable Tenor, provided that the Loan does not roll over in accordance with Clause 4.2;
- (c) the Self-Liquidation Date.

**4.2. Rollover of Loans.** Unless agreed to the contrary with the Bank, if a Loan disbursed for the account of certain Limit at a later time (e.g. due to movement of the Goods or such other event) complies with the terms and conditions of another Limit (for the purposes of this Clause, the "Second Limit"), that Loan will be treated as made for the account of the Second Limit as from the date the Loan so complies with the terms and conditions of the second Limit (the "Rollover Date"), and automatically extended up to the Tenor applicable for the Second Limit.

**5. REIMBURSEMENT AND DRAWINGS OF DOCUMENTARY INSTRUMENTS**

**5.1. Tenor of Documentary Instruments.** The Tenor of each Documentary Instrument shall normally not exceed the Tenor applicable as per the Limit Letter. If the Expiry Date exceeds the applicable Tenor, and upon its

occurrence another Tenor may not be applied to the Documentary Instrument, the Bank may request full Cash Cover for the Documentary Instrument, which the Customer shall provide within 3 (three) Business Days.

#### 5.2. Drawings.

- (a) The Customer irrevocably and unconditionally authorises the Bank to honour or pay any claim made or purported to be made under a Documentary Instrument requested by it and which appears on its face to be in order.
- (b) The Customer acknowledges that the Bank (i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.

#### 5.3. Reimbursement.

- (a) The Customer shall reimburse, indemnify and hold harmless the Bank and pay to the Bank immediately upon the Bank's first demand (which demand may be made prior to the date of Drawing under a Documentary Instrument), but not later than the day of the respective Drawing ("Reimbursement Date"), unless another Reimbursement Date is agreed upon by the Parties (or set forth in the Limit Letter), any Drawings or any other sums notified to the Customer as paid or payable by the Bank under a Documentary Instrument.
- (b) Should the Customer and the Bank agree to a Reimbursement Date which is after the date of a Drawing, then the amount of the Drawing (which may be reduced by the Bank at its sole discretion by and set off against any Cash Cover, or any part thereof, relating to the relevant Documentary Instrument) shall be a Loan starting on the date of Drawing with the

Reimbursement Date being the Loan Maturity Date.

- (c) The obligations of the Customer under this Clause will not be affected by (i) the sufficiency, accuracy or genuineness of any claim or any other document; or (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

5.4. *Indemnities.* The Customer shall immediately on demand indemnify the Bank against any cost, loss or liability incurred by the Bank (otherwise than by reason of the Bank's gross negligence or wilful misconduct) in acting as the Bank under any Documentary Instrument requested by the Customer. The obligations of the Customer under this Clause are continuing obligations and will extend to the ultimate balance of sums payable by the Customer in respect of any Documentary Instrument, regardless of any intermediate payment or discharge in whole or in part.

#### 6. RELEASE OF DOCUMENTARY INSTRUMENTS

- (a) Notwithstanding any Expiry Date or other term or condition of a Documentary Instrument issued by the Bank hereunder, the liability of the Customer in relation to the Documentary Instrument will not cease unless and until the Bank has been finally and unconditionally released from any and all obligations under the Documentary Instrument by the Beneficiary or by an intermediary bank, as the case may be.
- (b) Upon occurrence of the Expiry Date or any other termination, cancellation or expiry of a Documentary Instrument the Customer shall at the request of the Bank take such steps as are necessary to obtain confirmation from the Beneficiary or intermediary bank that the relevant Documentary Instrument is released.
- (c) If (i) a Documentary Instrument has a fixed Expiry Date and is not extended or renewed on or prior to such expiry

(by operation of law or otherwise), and (ii) the Bank has determined that no claim has been or may be made under such Documentary Instrument by the Beneficiary or any other person, the Bank will upon the request of the Customer confirm that the Customer does not bear liability in relation to such Documentary Instrument.

## **7. CASH COVER**

### **7.1. Cash Cover Account.**

- (a) The Customer shall open and maintain, for so long as any Accommodation is outstanding under the Finance Documents or the CTF Terms, or the Limit Letter is in force, Cash Cover Accounts with the Bank for the Cash Cover purposes.
- (b) Cash Cover shall be blocked in the relevant Cash Cover Account and the Customer shall have no right to use, nor access to, such Cash Cover Account (i) without the Bank's express permission, and (ii) as long as any amount under the relevant Accommodation remains unpaid and outstanding.
- (c) Unless expressly agreed otherwise in writing, Cash Cover will not bear any positive interest. Negative interest may be applicable in case of negative market rates for the respective currency.

**7.2. No Discharge by Cash Cover.** The Customer's obligations are not discharged by providing Cash Cover. Cash Cover will discharge the Customer's relevant obligation only when actually applied by the Bank to that effect.

**7.3. Cash Cover for Loans.** The Customer shall provide on the Bank's demand a Cash Cover in the amount which may be required by the Bank in relation to a Loan as set forth in the Limit Letter or as otherwise agreed between the Bank and the Customer, or to cover any excess of a Limit.

**7.4. Cash Cover for Documentary Instruments.** The Customer shall provide Cash Cover in the maximum amount which

may be claimed by the Beneficiary under the relevant Documentary Instrument, unless a lower amount is requested by the Bank, within 3 (three) Business Days after the Bank's demand in the following cases: (i) an Event of Default or a Mandatory Prepayment Event occurs and is continuing; (ii) the Expiry Date of the Documentary Instrument is extended at the request of the Customer or by operation of law or otherwise pursuant to the requirements of the applicable law; (iii) when an excess of a Limit occurs.

### **7.5. Regulation and consequences of Cash Cover provided.**

- (a) Until any amount is outstanding under a Loan secured by Cash Cover, the Customer may withdraw from that Cash Cover only for the repayment of that Loan.
- (b) Until any amount is or may be payable by the Bank under any Documentary Instrument secured by the Cash Cover, the Customer may withdraw from that Cash Cover only for the Reimbursement of that Documentary Instrument.
- (c) The Bank may apply any amount from any Cash Cover for the repayment or Reimbursement or payment under, any Accommodation or other payment due and payable to the Bank.
- (d) Upon request by the Customer, the Bank shall return to the Customer the amount of the Cash Cover attributable to a particular Loan or Documentary Instrument within 5 (five) Business Days after the full repayment of such Loan or expiry or full Reimbursement of such Documentary Instrument unless (i) any amount remains due and payable by the Customer to the Bank (including by virtue of a request to provide Cash Cover), or (ii) an Event of Default is continuing.

## **8. MANDATORY AND VOLUNTARY PREPAYMENT AND REBORROWING OF PREPAID OR REIMBURSED AMOUNTS**

**8.1. Mandatory Prepayment.** If a Mandatory Prepayment Event occurs:

- (a) the Bank shall promptly notify the Customer upon becoming aware thereof, and designate the Accommodations, affected by the Mandatory Prepayment Event;
- (b) no affected Loan will be subject to automatic rollover in accordance with Clause 4.2, and the Customer shall repay each affected Loan on the earlier of the Loan Maturity Date or the date reasonably designated by the Bank (being no earlier than the last day of any applicable grace period permitted by law);
- (c) the Customer shall use its best endeavours to procure the release of each affected outstanding Documentary Instrument by the respective Beneficiary;
- (d) Break Costs are payable within 3 (three) Business Days of demand by the Bank.

**8.2. Mandatory Prepayment Events.**

- (a) **Illegality.** In any applicable jurisdiction, it becomes unlawful for the Bank to perform any of its obligations as contemplated by any Finance Document, or to fund or maintain any Loan, or issue or leave outstanding any Documentary Instrument or provide any other Accommodation.
- (b) **Sanctions.** (i) An Obligor, or (ii) a Supplier, or a Buyer, or a person otherwise involved in a Transaction becomes subject to Sanctions, provided that in case of an event described in (ii) only the Accommodations related to the respective Transaction shall be subject to Clause 8.1.
- (c) **Default under Transaction.** The Customer breaches a Purchase Contract, or a Sale Contract, or repudiates any of those, or intends to do so, or the Bank reasonably believes that the Transaction will not be fully and properly fulfilled, provided that only the Loans, the Documentary Instruments and other

Accommodations related to the respective Transaction shall be subject to Clause 8.1.

**8.3. Voluntary Prepayment of Loans.**

- (a) The Customer may prepay the whole or any part of a Loan. Any prepayment shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (b) Break Costs are payable within 3 (three) Business Days of demand by the Bank.

**8.4. Revolving facility.** Unless a contrary indication appears in the Finance Documents, any part of the Facility which is prepaid or repaid may be re-utilised in accordance with the terms of these CTF Terms.

**9. FEES**

**9.1.** The Customer shall pay fees to the Bank as attributable to the respective Accommodation as envisaged in the respective Utilisation Request or other transactional document, or any other Bank fee schedule or the Limit Letter or specific pricing list advised by the Bank to the Customer from time to time.

**9.2.** If an Accommodation is repaid or terminated for whatever reason before its original maturity or expiry date, all fees determined solely by reference to the respective Accommodation, or by reference to a certain period of time which has commenced by the date of repayment or termination, shall continue to be payable in their original amounts without any reduction.

**9.3.** If the Customer provides Cash Cover, all fees shall continue to be payable in the original amount without any reduction.

**10. INTEREST**

**10.1. Interest – Loans.**

- (a) Interest on the outstanding amount of each Loan will accrue starting from the first day of each Interest Period, and until its last day (the first and the last day counted as one day).

- (b) The rate of interest on each Loan for each Interest Period is the percentage rate per annum specified in the respective Utilisation Request accepted by the Bank, and, if not specified, as determined by the Bank at its sole reasonable discretion.
- (c) The Customer shall pay accrued interest on each Loan on the last day of each Interest Period and on the Loan Maturity Date.

**10.2. Interest – Documentary Instruments.** Certain fees in relation to Documentary Instrument may be structured as interest accruing on the amount of the Documentary Instrument less all Drawings made on the same basis as described in Clause 10.1.

**10.3. Default interest.**

- (a) If the Customer fails to pay any amount payable by it under a Finance Document (including interest on a Loan) on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Bank if the Bank were to fund or of funding the relevant amount plus up to 5% per annum.
- (b) Any interest accruing under this Clause 10.3 shall be immediately payable by the Customer on demand by the Bank.

**10.4. Day count convention.** Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, where the market practice for a respective currency uses a year of 365 or 365/366 days, such year.

**11. INTEREST PERIODS**

**11.1. Determination of Interest Periods.**

- (a) Subject to paragraph (b) below, each Loan has one Interest Period, which begins on the Utilisation Date, and ends on the Loan Maturity Date.
- (b) If a Loan is rolled over in accordance

with Clause 4.2, the Interest Period preceding the rollover date will end in the date immediately preceding the rollover date, and the new Interest Period will start on the rollover date.

- (c) When interest is applicable to a Documentary Instrument in accordance with Clause 10.2:
  - (i) each Interest Period, save for exceptions below, will start on the first day of the respective calendar month, and end of the last day of the same month;
  - (ii) the first Interest Period shall start on the Utilisation Date and end on the last day of the same calendar month;
  - (iii) the last Interest Period will end on the earlier of the Expiry Date and the date when the Documentary Instrument is fully drawn.

**11.2. Non-business days.** If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

**12. CHANGES TO THE FEES AND CALCULATION OF INTEREST**

The Bank reserves the right in its entire discretion to amend its fees, interest rates and commissions payable under the Finance Documents at any time, as well as the dates on which they are debited and paid, and the methods of their calculation. The Bank shall inform the Customer in advance of such changes by any means it may deem appropriate.

**13. TAX GROSS-UP AND INDEMNITIES**

**13.1. Taxes.** Each Obligor shall pay all taxes, levies, duties, charges, funds or other imposts or withholding of any nature imposed on or in connection with any Accommodation (other than taxes on income of the Bank) and indemnify the Bank against any liability arising by reason of any delay or omission by that Obligor to make such payments or to file or make any relevant



declarations with any taxation authorities or any other competent authorities.

**13.2. No deduction.** All amounts payable by an Obligor under the Finance Documents, whether of principal, interest or otherwise, shall be paid in full without any deduction on account of any present or future taxes, levies, duties, charges, funds or other imposts or withholding of any nature.

**13.3. Tax gross-up.** In the event of the Obligor being compelled by law or other regulations to make any such deduction or withholding from any payment to the Bank, the Obligor shall pay on the due date for such payment such additional amounts as may be necessary to ensure that the net amounts received by the Bank after such deductions or withholding shall equal the amount which should have been received in the absence of any such deduction or withholding.

#### **14. OTHER INDEMNITIES**

**14.1. Currency indemnity.** If any sum due from an Obligor under the Finance Documents (for the purposes of this Clause, a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (for the purposes of this Clause, the “**First Currency**”) in which that Sum is payable into another currency (for the purposes of this Clause, the “**Second Currency**”) for the purpose of (i) making or filing a claim or proof against that Obligor; (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, that Obligor shall as an independent obligation, within 3 (three) Business Days of demand, indemnify the Bank against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum. Each Obligor waives any right they may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

**14.2. Other indemnities.** Each Obligor shall within 3 (three) Business Days of demand indemnify the Bank against any cost, loss or liability incurred by the Bank as a result of (i) the occurrence of any Event of Default or (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date.

#### **15. COSTS AND EXPENSES**

**15.1. Transactional expenses.** The Customer shall promptly on demand pay to the Bank the amount of all costs and expenses (including legal fees) reasonably incurred by the Bank in connection with the negotiation, preparation, printing and execution of any Finance Document.

**15.2. Enforcement costs.** The Customer shall, within 3 (three) Business Days of demand, pay to the Bank the amount of all costs and expenses (including legal fees) incurred by the Bank in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

#### **16. REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause to the Bank.

**16.1. Status.** Each Obligor is a legal entity duly established and validly existing under the law of its jurisdiction of establishment. Each Obligor has the power to own its assets and carry on its business as it is being conducted.

**16.2. Binding obligations.** The obligations expressed to be assumed by each Obligor in each Finance Document are legal, valid, binding and enforceable obligations.

**16.3. Non-conflict with other obligations.** The entry into and performance by each Obligor of, and the transactions contemplated by, the Finance Documents do not and will not conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets.

**16.4. Power and authority.** Each Obligor has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

**16.5. Validity and admissibility in evidence.** Except for the registration requirements (if any) in respect of any relevant Security Document in any relevant jurisdiction to be met within a given time frame after the execution and delivery of all the Finance Documents, all authorisations required or desirable (i) to enable each Obligor lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party, and (ii) to make the Finance Documents to which each Obligor is a party admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect.

**16.6. Governing law and enforcement.** The choice of Swiss or any other law as governing law of the respective Finance Documents will be recognised and enforced in each Obligor's jurisdiction of establishment. Any judgment obtained in Switzerland in relation to a Finance Document will be recognised and enforced in each Obligor's jurisdiction of establishment.

**16.7. No default.** No Event of Default is continuing or might reasonably be expected to result from the provision of any Accommodation. No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on each of the Obligors.

**16.8. No misleading information.**

- (a) Any factual information provided by any Obligor to the Bank was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Nothing has been omitted from the information provided by any Obligor to the Bank for the purpose of that Obligor's creditworthiness, compliance and "*know you client*" check and proposed transaction assessment and no information has been given or withheld that results in the information being untrue or misleading in any material respect

- (c) There has been no material adverse change in any Obligor's business or financial condition since the end of the financial period the latest financial statements submitted to the Bank relate to.

**16.9. *Pari passu* ranking.** Each Obligor payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**16.10. No proceedings pending or threatened.** No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or threatened against any of the Obligors.

**16.11. No agency.** It is entering into each Transaction thereunder as principal and not as agent of any person or entity.

**16.12. Anti-money laundering, anti-corruption, anti-bribery.** No Obligor, nor any of its subsidiaries, their respective directors and officers, or, to the best of its knowledge, any affiliate, agent or employee of an Obligor or any of its subsidiaries, has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption, anti-terrorism financing or anti-money laundering laws, regulations or rules in any relevant jurisdiction and all Obligors have instituted and maintain policies and procedures designed to prevent violation of such laws, regulations and rules;

**16.13. Sanctions.** None of the Obligors is subject to Sanctions, save for the Sanctions disclosed to the Bank prior to conduct of any business with the respective Obligor, and no Accommodation, whether outstanding or proposed, violates, circumvents, or is intended to violate or circumvent any Sanctions.

**16.14. Repetition.** The representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date any Finance

Document is signed and on each day any amount or Accommodation remains outstanding or owed by any Obligor.

## **17. INFORMATION UNDERTAKINGS**

The undertakings in this Clause remain in force for so long as any amount or Accommodation is outstanding under the Finance Documents is in force.

**17.1. Financial statements.** The Customer shall provide the Bank: (a) as soon as the same become available, but in any event within 180 days after the end of each of its financial years the audited financial statements of each Obligor for that financial year; and (b) as soon as the same become available, but in any event within 45 days after the end of each half and, where applicable, quarter of each of its financial years the management financial statements of each Obligor for that financial half / quarter year.

**17.2. Requirements to financial statements.** The financial statements delivered by the Customer pursuant to Clause 17.1 (*Financial statements*) must be in a form satisfactory to the Bank and fairly represent financial conditions of the Obligors as at the dates as at which those financial statements were drawn up. The Customer shall procure that the financial statements delivered pursuant to Clause 17.1 (*Financial statements*) are prepared using generally accepted accounting principles in the jurisdiction of the respective Obligor's domicile, including IFRS.

**17.3. Information: miscellaneous.** The Customer shall supply to the Bank:

- (a) notification of any Obligor's default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Obligors, and which might, if adversely determined, have a Material Adverse Effect;

- (c) promptly upon becoming aware of them, the details of any changes to the documents and information relating to any Obligor earlier provided to the Bank;
- (d) promptly upon becoming aware of them, the details of any events which might adversely affect the Security supporting the obligation of the Customer or any other Obligor under the Finance Documents and/or performance of any party under the Transaction; and
- (e) promptly, such further information regarding the financial condition, business and operations of any Obligor as the Bank may reasonably request.

**17.4. "Know your customer" checks.** Each Obligor shall promptly upon the request of the Bank supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Bank in order for the Bank to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**17.5. Transaction monitoring assistance.** The Customer shall promptly provide the Bank upon the latter's request with all information and other assistance necessary or desirable for monitoring of application of any amount or borrowed or Accommodation made pursuant to these CTF Terms.

## **18. FINANCIAL COVENANTS**

### **18.1. Tangible Net Worth.**

- (a) The Tangible Net Worth of the Obligor shall be not less than the amount set out in the Master Agreement at any time for so long that these CTF Terms are in force and any Accommodation is outstanding.
- (b) The Tangible Net Worth is (i) Equity as defined in the financial statements (share capital, additional paid-in capital, retained earnings, legal reserves, recalculation reserve and non-controlling interest) and (ii)

subordinated loans received, less (iii) loans granted to related companies and/or non-trade related receivables due by related companies, less (iv) loans to shareholders, less (v) intangibles.

**18.2. Current Ratio.** The Current Ratio of the Obligor shall be not less than the amount set out in the Master Agreement at any time for so long that these CTF Terms are in force and any Accommodation is outstanding.

**18.3. Other financial covenants.** Other financial covenants may be imposed on an Obligor by an agreement with the Bank.

**18.4. Testing.** The financial covenants will be tested quarterly based on management or, where appropriate, audited financial statements provided by the Customer (or as the case may be by any other Obligor) and prepared in a form satisfactory to the Bank.

## **19. GENERAL UNDERTAKINGS**

The undertakings in this Clause remain in force as long as any Loan or Documentary Instrument or other Accommodation is outstanding.

**19.1. Authorisations.** Each Obligor shall (and shall procure the other Obligors to) promptly obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Bank of any authorisation required under any law or regulation of its jurisdiction of incorporation (including evidence of complying with the registration requirements in respect of any relevant Security Document in any relevant jurisdiction to be met within a given time frame after the execution and delivery of all the Finance Documents) to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

**19.2. Compliance with laws.** Each Obligor shall (and shall procure the other Obligors to) comply in all respects with all laws to which they may be subject, if failure so to comply would materially impair their ability to perform their obligations under the Finance Documents.

**19.3. Compliance with Sanctions.** Each Obligor shall (and shall procure the other Obligors to) comply in all respects with the Sanctions, and prevent any violation of Sanctions.

**19.4. Change of business.** Each Obligor shall (and shall procure the other Obligors to) refrain from any substantial change to the general nature of its business.

**19.5. Negative pledge.** Except for any security interest created in favour of the Bank pursuant to the Finance Documents, no Customer shall create, nor permit to subsist, any security interest over any assets that are (or are purported to be) subject to a security interest in favour of the Bank pursuant to any of the Finance Documents.

**19.6. Insurance coverage.**

- (a) The Customer shall keep or cause to be kept, all Goods relating to a Transaction (and, to the extent those are different, the Pledged Goods) insured in their full value against all usual risks and against such other risks and contingencies as the Bank may direct, with insurance companies satisfactory to the Bank.
- (b) The Customer shall keep all relevant Insurance Documents, and, at the request of the Bank, shall assign the policies or certificates of insurance to the Bank or ensure that the Bank is named as loss payee or co-insured or beneficiary under such policy and shall furnish the Bank upon request with evidence of acceptance by the insurers together with proof of payment of all premiums.
- (c) The Customer shall promptly notify the relevant insurers and the Bank of any loss or damage and act diligently in relation to all matters pertaining to such loss or damage.
- (d) The Customer will pay to the Bank all sums received under such insurances or otherwise in respect of any loss or damage of the respective Goods.
- (e) The Customer agrees that the Bank may, without reference to the

Customer, insure respective Goods or pay such amounts, and any expenditure so incurred by the Bank shall be for the account of the Customer.

**19.7. Inspection.** Each Obligor shall permit, or procure permission by the other Obligors for, the Bank or its agents or nominees to inspect at any time any Goods relating to a Transaction (and, to the extent those are different, the Pledged Goods) or other relevant items or records, including allowing the right of the Bank or such persons to:

- (a) have, at all reasonable times during normal business hours, and on reasonable notice, access to the facilities of any Obligor and all other property and premises of any Obligor and to all officers, accounting books, records, computer programs and other data or information of any Obligor to the extent reasonably necessary to monitor the compliance with, and performance under, the Finance Documents and in relation to financings provided by the Bank; and
- (b) pre-inspect and/or inspect each warehouse used or to be used for storage of the Goods relating to a Transaction (and, to the extent those are different, the Pledged Goods) to verify, *inter alia* whether or not it is in an acceptable condition to hold such Goods; and
- (c) inspect, at any time, the Goods relating to a Transaction (and, to the extent those are different, the Pledged Goods) and storage locations, including, without limitation, in respect of their existence into the storage locations, conditions of deposit, quantity and quality, etc.

**19.8. Environmental laws.** The Customer shall at all times comply in all material respects with all applicable environmental laws and obtain and comply with the terms of every environmental consent required under or pursuant to any environmental law in connection with the conduct by it of its business and the ownership, use, exploitation or occupation by it of its assets.

**19.9. Coverage Ratio.**

- (a) The Customer shall at all times maintain a Coverage Ratio in respect of each Loan or Documentary Instrument at a level of not less than 100%, unless a higher threshold in respect of a particular Loan or Documentary Instrument is agreed upon by the Parties.
- (b) Should the Coverage Ratio not be met in the reasonable opinion of the Bank, the Customer shall remedy the same in such manner as the Bank may reasonably direct (be it by increasing the Cash Cover or providing other acceptable security), or decrease of the amount of the respective Loan in accordance with the CTF Terms.
- (c) For the avoidance of doubt, any Security granted by a security provider in connection with a particular Loan or Documentary Instrument shall be covering and supporting all other Loans and Documentary Instruments under these CTF Terms and obligations of the Customer or any other Obligor under the Finance Documents as well, but for the purposes of the Coverage Ratio calculation shall be treated in respect to that particular Loan or Documentary Instrument only.

**19.10. Maintenance of Accounts.**

- (a) The Customer shall ensure that all sums payable by the Buyers to the Customer under Sale Contracts within the respective Transactions will be transferred by the Buyers directly to the Collection Account.
- (b) Each Obligor hereby irrevocably authorises the Bank to debit all amounts from any of its accounts with the Bank and apply them for discharging of its obligations under these CTF Terms or other Finance Documents, and the Bank accepts this payment instruction.
- (c) Unless explicitly permitted in these CTF Terms or other Finance Documents, the Customer shall not for

so long as any amount or Accommodation is outstanding under these CTF Terms or Finance Documents is in force:

- (i) create, or agree to create or permit to subsist any security over any of its accounts with the Bank (other than a first ranking pledge in favour of the Bank as security for the Finance Documents);
- (ii) modify or revoke, or attempt to modify or revoke, any of the authorisations or instructions given by it in the Finance Documents;
- (iii) transfer, without the Bank's prior consent, any amounts from any of its accounts with the Bank other than the ones contemplated under paragraph (b) above.

#### **19.11. Hedging.**

- (a) If so agreed with the Bank in the Utilisation Request or otherwise, the Customer is obliged to hedge with the Bank or, upon prior Bank's consent, with any other bank or broker acceptable to the Bank (i) the commodity price decrease risk relating to the Goods, insofar it is technically possible, and (ii) the foreign exchange risk, in case the proceeds under the Sale Contract relating to the Transaction financed out of Loan proceeds or with a Documentary Instrument support are to be received in a currency other than the currency of the Loan or reimbursement undertaking.
- (b) The Customer undertakes to create a first ranking security right in favour of the Bank over any hedging account used for the purpose of hedging the commodity price risk and or the foreign exchange risk associated with Transactions financed by the Bank (save for the security rights of the bank or broker providing the respective hedge).

**19.12. Other obligations.** Each Obligor shall (and shall procure the other Obligors to)

comply with the additional positive or negative obligations as envisaged here below:

- (a) Loans and credit. No Obligor shall grant loans and/or credits. This limitation does not apply to any trade credit extended by an Obligor to its customers on an arm's length basis and normal commercial terms and in the ordinary course of its trading activities.
- (b) Guarantees and indemnities. No Obligor shall incur or allow to remain outstanding any guarantee or indemnity in respect of any obligation of any person. This limitation does not apply to any guarantee or indemnity granted by that Obligor in respect of any obligation of a member its group on an arm's length basis and normal commercial terms and in the ordinary course of its trading activities.
- (c) Disposals. No Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset. This limitation does not apply to any sale, transfer or other disposal made in the ordinary course of trading of the disposing entity.

#### **20. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause is an Event of Default (save for Clause 20.15 (*Acceleration*)).

**20.1. Non-payment.** An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by administrative or technical error, and
- (b) payment is made within 3 (three) Business Days of its due date.

**20.2. Financial covenants.** Any requirement of Clause 18 (*Financial covenants*) is not satisfied.

### 20.3. Other obligations.

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.1 (*Non-payment*) and Clause 20.2 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 (ten) days of the earlier of the Bank giving notice to the respective Obligor and that Obligor becoming aware of the failure to comply.

**20.4. Misrepresentation.** Any representation or statement made or deemed to be made by or on behalf of an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

### 20.5. Cross-default.

- (a) Any debt of an Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any debt of an Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any creditor of an Obligor becomes entitled to declare any debt of that Obligor due and prior to its specified maturity as a result of an event of default (however described).
- (d) Any commitment for any debt of an Obligor is cancelled or suspended by a creditor of that Obligor as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 20.5 if the aggregate amount of the respective debt and commitment falling within paragraphs (a) to (d) above is less than the threshold established in the Master Agreement or other Finance Document for this purpose (or its equivalent in any other currency or currencies).

### 20.6. Insolvency and insolvency proceedings.

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor.
- (d) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of an Obligor;
  - (ii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of an Obligor or any of their assets;
  - (iii) enforcement of any Security over any assets of an Obligor; or
  - (iv) any analogous procedure or step is taken in any jurisdiction,provided that no Event of Default shall occur on the basis of any petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 (thirty) days.

**20.7. Creditor's process.** Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of an Obligor having an aggregate value of 10% or more of the Equity of that Obligor and is not discharged within 30 (thirty) days.

**20.8. Change of control.** A Change of Control occurs in respect of an Obligor.

**20.9. Cessation of business.** An Obligor suspends, ceases or threatens to suspend or cease to carry on all or a substantial part of its business.

**20.10. Unlawfulness.** It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

**20.11. Repudiation.** An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

**20.12. Security.**

- (a) Any Security Document is not in full force and effect or does not create in favour of the Bank and for its benefit the Security which it is expressed to create and the Security is not perfected with the ranking and priority it is expressed to have.
- (b) There occurs any event or series of events or circumstance which, in the opinion of the Bank, adversely affects or is reasonably likely to affect the Security supporting of all or part of the obligations of an Obligor under the Finance Documents.

**20.13. Litigation.** Any litigation, arbitration, administrative, governmental, regulatory or other investigation, proceedings or dispute is commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against an Obligor or its assets which has or is reasonably likely to have a Material Adverse Effect.

**20.14. Material Adverse Change.** Any event having Material Adverse Effect occurs.

**20.15. Acceleration.** On and at any time after the occurrence of an Event of Default which is continuing, the Bank may by notice to the Customer:

- (a) declare that any or all amounts, together with accrued interest, outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (b) declare that any or all amounts, together with accrued interest,

outstanding under the Finance Documents be payable on demand; and/or

- (c) demand that Cash Cover in respect of each outstanding Documentary Instrument is provided for by the Customer to the Bank within 3 (three) Business Days; and/or
- (d) terminate any or all Accommodations; and/or
- (e) demand that the Customer takes all appropriate steps to discharge and release the Bank from any and all outstanding Documentary Instrument and other Accommodations (such steps may include, but are not limited to, the transfer of such Documentary Instrument or other Accommodation to another bank); and/or
- (f) enforce any or all of the rights under the Security Documents it being understood that the Bank has entire discretion as to determine which rights to enforce and the order of enforcement and that the Bank remains entitled to only enforce its rights directly against the Customer without foreclosing on any rights granted under the Security Documents (waiver of the '*beneficium excussionis realis*').

## 21. CHANGES TO THE PARTIES

**21.1. Assignments and transfers by the Bank.** The Bank may, without the consent of an Obligor, assign or transfer its rights against that Obligor in Switzerland or abroad, or enter into risk sharing or similar arrangements in respect thereof, or enter into sub-participation or similar arrangements in respect of the obligations of the Bank to that Obligor.

**21.2. Assignment and transfers by Obligors.** No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the Bank's prior written consent.

## 22. PAYMENT MECHANICS

**22.1. No set-off by Obligors.** All payments to be made by an Obligor under the Finance



Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**22.2. Business Days.** Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not). During any such extension of the due date for any interest-bearing amount interest will accrue on such amount at the rate applicable on the original due date.

**22.3. Currency of account.** Any amount expressed to be payable under the Finance Documents in a certain currency shall be paid by the respective Obligor in that currency. Each payment in respect of costs, expenses or taxes shall be made in the currency in which the costs, expenses or taxes are incurred.

**23. SET-OFF**

The Bank may set off any obligation due from an Obligor under the Finance Documents against any obligation owed by the Bank to that Obligor, regardless of the maturity, place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**24. NOTICES**

**24.1. Communication in writing.** Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by letter or email, to the address or e-mail (and the department or officer, if any, for whose attention the communication is to be made) designated by the respective Party for these purposes in the Master Agreement or in the absence of such designation, to the last address known to the Bank.

**24.2. Delivery.** Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective, if by way of letter, when it has been left at the relevant address or 5 (five) Business Days

after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.

**24.3. Electronic communication.**

- (a) Any communication to be made between the Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means. The Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication if the Parties (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means and (ii) notify each other of any change to their address or any other such information supplied by them by not less than 5 (five) Business Days' notice.
- (b) Any electronic communication made between the Parties will be effective only when actually received in readable form.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
- (d) The Obligor shall deliver the original of a document, initially submitted by electronic means, in hard copy to the Bank within 5 (five) Business Days after the respective Bank's request.

**24.4. English language.** Any notice given under or in connection with any Finance Document must be in English, unless the Bank agrees or determines otherwise. All other documents provided under or in connection with any Finance Document must be (i) in English or (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 25. MISCELLANEOUS

**25.1. Currency of payments.** Payment shall be made by the Customer to the Bank in the currency in which the Bank has disbursed the Facility. If payment by the Customer cannot for any reason be made in such currency (the “**first currency**”), the Bank may require payment to be made in another currency (the “**second currency**”), with the second currency being converted into the first currency at the Bank’s Spot Rate of Exchange on the relevant day of payment.

**25.2. Customer’s obligation to perform.** The liability and obligation of the Customer to pay any amount due under the Finance Documents on the due date of payment thereof is in no way conditional upon the performance of any other agreement by the parties, neither shall this liability and obligation be affected in any way by reason of any claim which the Customer may have or may consider that it has against the Bank or any other party or for any other reason whatsoever.

**25.3. Partial invalidity.** If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**25.4. Remedies and waivers.** No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

**25.5. Waivers.** waiver to a Finance Document shall be effective only if made in writing.

**25.6. Confidentiality.**

(a) Confidential Information of the Customer. The Bank will handle the

Confidential Information in accordance with the respective provisions of the General Terms and Conditions.

(b) Confidential Information of the Bank. Each Obligor shall ensure that the Confidential Information is not disclosed to anyone, and that the Confidential Information is handled with security measures and a degree of care that would apply to its own confidential information.

**25.7. No unlawful acts or omissions, no violation of Sanctions.** The Bank is in no case obliged to act in any way, or refrain from a certain action, if such action or omission are, in the Bank’s reasonable opinion, unlawful under any law applicable to the Bank, including any Sanctions. The Bank will bear no liability in connection with the Bank so refusing to act unlawfully, or so acting to prevent unlawful omission, or refusing to do anything in violation of Sanctions.

## 26. GOVERNING LAW

These CTF Terms and all other Finance Documents shall be governed by and construed *exclusively* in accordance with Swiss law (exclusive of any rules of conflict of law), provided, in relation to other Finance Documents, that a Finance Document expressly purporting to be governed by certain law shall be governed by that law.

## 27. ENFORCEMENT

**27.1.** The place for performance of the obligation, the *exclusive* jurisdiction for proceedings of any kind and the jurisdiction for any collection proceedings will be Zurich (Switzerland).

**27.2.** Any dispute under, or in connection with, these CTF terms, including a dispute relating to the existence, validity, or termination thereof or any non-contractual obligation arising thereunder or in connection therewith (the “**Dispute**”) shall be resolved in the Zurich Cantonal Court of Commerce (*Handelsgericht des Kantons Zürich*).

**27.3.** In addition, the Bank reserves the right to bring legal action against the Customer or any other Obligor before any competent jurisdiction outside Switzerland or refer it to final resolution by arbitration in accordance with the Clause 27.4 below.

27.4. The Bank may refer any Dispute for final and binding resolution by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution (the Rules) in force on the date on which the notice of arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one to be nominated in accordance with the Rules. The seat of arbitration shall be Zurich, Switzerland. The language of the arbitration shall be English.

27.5. With respect to the enforcement of any obligations of the Customer or any other Obligor to the Bank under the Finance Documents and if there is no ordinary place of foreclosure (*Betreibungsart*) in Switzerland in relation to the Customer or such Obligor pursuant to the Swiss Federal Statute on Debt Enforcement and Bankruptcy (*SchKG*), the place of foreclosure (*Betreibungsart*) shall be Zurich 1, which shall operate as a special domicile (*Spezialdomizil*) of that Customer or such Obligor pursuant to article 50 para. 2 of the Swiss Federal Statute on Debt Enforcement and Bankruptcy (*SchKG*).

## 28. DEFINITIONS

In these CTF Terms and, unless otherwise defined therein, in each Finance Document:

“**Accommodation**” means any financing or credit instrument that the Bank provides to the Customer, including, without limitation, Loans and Documentary Instruments.

“**Bank's Spot Rate of Exchange**” means the Bank's spot rate of exchange for the purchase of a certain currency with another currency at or about 11:00 a.m. on a particular day.

“**Base Currency**” means, in relation to a Limit, the currency in which the respective Limit is defined.

“**Base Currency Amount**” means in relation to an Accommodation, the amount specified in the Utilisation Request delivered by the Customer for that Accommodation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Bank's Spot Rate of Exchange on the date which is 3 (three)

Business Days before the Utilisation Date or, if later, on the date the Bank provides financing further to receipt of a Utilisation Request in accordance with the terms of these CTF Terms) and as adjusted daily under Clause 3.6 (*Revaluation*).

“**Beneficiary**” means a person to whom a Documentary Instrument is payable either directly or through an intermediary bank.

“**Break Costs**” means the amount (if any) by which: (i) the interest which a Bank should have received for the period from the date of receipt of all or any part of a Loan to the last day of the applicable Interest Period in respect of that Loan exceeds (ii) the amount which that Bank would be able to obtain by placing an amount equal to the principal amount of the Loan received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the applicable Interest Period.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Zurich, and (i) (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency, or (ii) (in relation to any date for payment or purchase of euro) any TARGET Day.

“**Buyer**” means the person to whom the Customer sells the Goods under the Sale Contract.

“**Cash Cover**” means a deposit in cash placed by the Customer with the Bank to secure the Customer's obligations under the Finance Documents.

“**Cash Cover Account**” means any account held by the Customer with the Bank for Cash Cover purposes, including any current or deposit account of the Customer or any account specifically designated for deposit of Cash Cover.

“**Change of Control**” means that the Designated Person ceasing to, directly or indirectly,

- (a) have the power (whether by way of ownership of shares, proxy, contract,

agency or otherwise) to (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the respective Obligor, or (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the respective Obligor, or (iii) give directions with respect to the operating and financial policies of the respective Obligor which the directors or other equivalent officers of the respective Obligor are obliged to comply with; or

- (b) maintain a holding of more than one half of the capital of the respective Obligor (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital), as applicable.

“**Collection Account**” means (a) an account of the Customer with the Bank ordinarily used for payments of certain type, or such account specifically designated by the Bank, or (b) if expressly designated by the Bank in writing, an account with another bank.

“**Confidential Information**” means all information relating to the Bank’s commodity trade finance business with the Customer.

“**Coverage Ratio**” means, at any time, the value of the Goods pledged and claims under Sale Contracts or Purchase Contracts assigned in favour of the Bank to secure the Customer’s obligations under a Loan or a Documentary Instrument plus the amount of the available Cash Cover relating to this Loan or Documentary Instrument as a percentage of the outstanding amount of that Loan or Documentary Instrument.

“**Current Ratio**” means the ratio of the respective Obligor’s balance sheet assets, expected to be realised within the twelve months from the date of testing, to that Obligor’s balance sheet liabilities, falling due within twelve months from the date of testing.

“**CTF Terms**” means these Commodity Trade Finance Terms and Conditions.

“**Designated Person**” means a person so designated in the Master Agreement.

“**Documentary Instrument**” means a documentary credit, a standby letter of credit, a guarantee, a counter-guarantee, a bid bond, a performance bond, a letter of indemnity or similar instrument where the Bank incurs a contingent liability upon the order of the Customer.

“**Drawing**” means any payment which is made from time to time by the Bank pursuant to a Documentary Instrument.

“**Equity**” means the consolidated total equity of an Obligor attributable to the shareholders of that Obligor according to the most recent audited annual financial statements of that Obligor delivered in accordance with Clause 17.1 (*Financial statements*).

“**Event of Default**” means any event or circumstance specified as such in Clause 20 (*Events of Default*).

“**Expiry Date**” means, for a Documentary Instrument, the last day of its validity until which the Bank remains liable under a Documentary Instrument.

“**Facility**” has the meaning given to it in Clause 2.1 (*The Facility*).

“**Finance Document**” means: (a) the Master Agreement (b) these CTF Terms; (c) the Limit Letter; (d) any Utilisation Request accepted by the Bank; (e) the General Terms and Conditions; (f) the Security Documents; (g) the Insurance Documents; (h) any other document designated as such by the Bank, each as amended, amended and restated, restated, supplemented, novated or otherwise modified or increased in the amounts from time to time

“**General Terms and Conditions**” means the Bank’s general terms and conditions regulating business relationship of the Bank with each of its customers.

“**Goods**” means certain commodities of nomenclature, quality, quantity, terms of delivery and price agreed upon for the purposes of a Transaction or provided to the Bank as collateral in relation to an Accommodation.

“**Guarantor**” means any party that signed or adhered to the Master Agreement as guarantor.

“**Insurance Documents**” means all policies in force, related to a Transaction.

“**Interest Period**” means each period determined in accordance with Clause 11 (*Interest Periods*).

“**Limit**” means a maximum principal amount (not counting interest, fees, etc.) of all Accommodations provided or certain Accommodations provided of one type (such type may be determined by e.g. reference to a specific financing stage or other conditions).

“**Limit Letter**” has the meaning given to it in Clause 2.2.

“**Loan**” means a loan which the Bank may in its absolute discretion make available to the Customer under the terms of these CTF Terms and the Credit Facility following acceptance of a Utilisation Request or the principal amount outstanding for the time being of that loan.

“**Loan Maturity Date**” has the meaning given to it in Clause 4.1 (*Repayment of Loans*).

“**Mandatory Prepayment Event**” means any event or circumstance specified as such in Clause 8.2 (*Mandatory Prepayment Event*).

“**Master Agreement**” means the master commodity trade finance agreement between the Bank and one or several Customers and one or several Guarantors, as amended from time to time.

“**Material Adverse Effect**” means a material adverse effect on (i) the business, operations, property or financial condition of any Obligor or the Customer’s group taken as a whole, or (ii) the ability of any Obligor to perform any of their respective payment obligations under the Finance Documents, or (iii) the validity or enforceability of any Finance Document or the rights or remedies of the Bank under any Finance Document.

“**Obligor**” means the Customer or any person providing a guarantee and/or an indemnity in favour of the Bank, any person providing Security in favour of the Bank and any other person other than the Bank that is

or becomes bound by the Finance Documents, and any party that signed or adhered to the Master Agreement either as Customer or as Guarantor.

“**Pledge and Assignment Agreement**” means the agreement between the Bank and an Obligor by which such Obligor pledges to the Goods and right related to the respective Transaction, and assigns these rights.

“**Purchase Contract**” means the contract whereby the Customer purchases the Goods from a respective Supplier.

“**Reimbursement**” means reimbursement by the Customer to the Bank of any Drawings or any other sums paid or payable by the Bank under a Documentary Instrument.

“**Reimbursement Date**” has the meaning given to it in Clause 5.3(a).

“**Repayment Date**” means the final date for repayment of a Loan specified as such in the relevant Utilisation Request.

“**Sale Contract**” means the contract whereby the Customer sells the Goods to a respective Supplier.

“**Sanctions**” means any trade sanctions, embargos, freeze orders or export bans, and such other legal, political or administrative measures imposed by governmental bodies of agencies thereof, or supranational bodies, including the governments of Switzerland, the United States of America, the United Kingdom, the European Union, and the United Nations, against an Obligor or any entity relevant to a Transaction or an Accommodation, e.g. a Supplier or a Buyer, an insurer, a freight forwarder, a shipper, an owner of the ship, a carrier, a surveyor, an agent, a bank, a port, or a vessel.

“**Security**” means a mortgage, charge, pledge, lien, assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Security Document**” means each of the Pledge and Assignment Agreement and/or the security deed and any specific or general pledge agreement and/or assignment of claims, any guarantee and/or indemnity and any other document creating a security

interest acceptable to the Bank in support of all or part of the obligations of the Customer or any other Obligor under the Finance Documents, including any security agreement granting a first ranking security right over the Customer's hedging account with any provider of hedges.

**"Self-Liquidation Date"** means the day when the Buyer pays to the Customer for the Goods financed out of proceeds of such Loan.

**"Supplier"** means the person from whom the Customer buys the Goods under the Purchase Contract.

**"TARGET2"** means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

**"TARGET Day"** means any day on which TARGET2 is open for the settlement of payments in euro.

**"Tenor"** means the maximum tenor of a Loan or a Documentary Instrument as per the Limit Letter.

**"Transaction"** means any commodity trade transaction in relation to which the Customer requests the Bank to grant a Loan or issue a Documentary Instrument or to provide other Accommodation in order to finance (i) certain amounts payable to a Supplier under the respective Purchase Contract for the Goods to be sold to a Buyer in accordance with a Sale Contract, and/or (ii) certain amounts or ancillary costs relating to such Goods, such as hedging, transportation, storage or insurance costs.

**"Utilisation Date"** means the date when the facility is utilised, being the date on which a Loan is actually made or a Documentary Instrument is actually issued or, in general, an Accommodation is provided.

**"Utilisation Request"** means a notice in a satisfactory form to the Bank issued by the Customer, describing the Transaction, Security, interest, fees and other details of any Loan or Documentary Instrument, or other Accommodation.