

Terms and Conditions of Application for Processing Export Transaction

1. This application is subject to the Uniform Customs and Practice for Documentary Credits (“UCP”) (for DC Transactions) or Uniform Rules for Collections (“URC”) (for D/A and D/P transactions) of the International Chamber of Commerce as are in effect from time to time. This application is also subject to the General Security Agreement Relating to Goods, General Customer Agreement and/or other agreement(s) previously signed and delivered by the applicant of this application (the “Applicant”) to The Bank of East Asia, Limited (the “Bank”), if any. In case of conflict, terms of this application shall prevail to the extent of conflict.
 2. Unless otherwise agreed by the Bank in writing, any negotiation, prepayment, purchase and/or advance (“Financing”) provided by the Bank under the Credit or the D/A or D/P transaction is with full recourse against the Applicant notwithstanding the UCP or other applicable rules which may provide otherwise. The Applicant further acknowledges and agrees that it will repay the Bank on demand for any Financing obtained from the Bank plus any applicable interest, discount and charges, without raising any defence or objection. The Applicant also undertakes to repay any Financing under the Credit plus any applicable interest, discount and charges, without further demand if the Bank, due to whatever reasons, does not receive full and punctual payment(s) under the Credit including, but not limited to, the occurrence of any of the following situations:-
 - (a) The issuing, confirming or nominated bank holds the view that the Documents are non-complying irrespective of the fact that the Bank may consider otherwise; or
 - (b) The issuing, confirming or nominated bank fails to honour their payment obligations under the Credit or reimburse the Bank on time due to insolvency, foreign exchange control, any court order, fraud or allegation of fraud, commercial dispute or any other reasons.
 3. If the amount (if any) actually received by the Bank under the Credit or the D/A or D/P transaction is insufficient for discharge of the Financing plus any applicable interest, discount and charges in full, the Applicant shall immediately pay to the Bank any shortfall amount. Without prejudice to the generality of the foregoing, where the amount received under the Credit or the D/A or D/P transaction is in the currency other than the currency of Financing, the Bank may convert the amount received into the currency of Financing at the spot rate of exchange determined by the Bank at the time of conversion, and the Applicant shall indemnify the Bank against any shortfall if the converted amount is less than the Financing plus any applicable interest, discount and charges.
 4. Where the Financing amount provided to the Applicant is denominated in a currency different from the currency of the Credit or the D/A or D/P transaction, the Applicant shall enter into such foreign exchange contract (whether deliverable or non-deliverable) on the terms satisfactory to the Bank for hedging the currency risk. Any amount received or to be received by the Applicant under each such foreign exchange contract shall be applied by the Applicant towards discharge of the Financing amount plus any applicable interest, discount and charges, and if any amount is payable by the Bank to the Applicant in respect of any foreign exchange contract entered into between the Bank and the Applicant, the Bank has the right at any time to set-off and apply such amount payable by the Bank against and/or towards satisfaction of the Financing amount plus any applicable interest, discount and charges without any notice or reference to the Applicant.
 - 4A. (1) Unless otherwise agreed, if the Credit and the Financing amount are denominated in renminbi (“RMB”), the Applicant shall forthwith enter into a foreign exchange swap with the Bank (the “FX Swap”) containing the following terms (or such other terms as determined by the Bank at its sole discretion):-
 - (a) on the Financing date, the Applicant shall pay RMB amount equal to the Financing amount (“RMB Exchange Amount”) and the Bank shall pay the United States dollars (“USD”) amount (“USD Exchange Amount”) which is calculated at CNY/USD foreign exchange swap exchange rate determined by the Bank at its sole discretion; and
 - (b) on the due date of payment by the issuing bank under the Credit, the Bank shall pay RMB Exchange Amount and the Applicant shall pay the USD Exchange Amount.On the Financing date, the Bank is hereby authorised (but not obliged) to apply the Financing amount towards direct settlement of the RMB Exchange Amount payable by the Applicant to the Bank under the FX Swap.
 - (2) For any RMB interest payable on the Financing amount, if the Bank requires, the Applicant shall settle the interest in USD subject to the following arrangements:-
 - (a) the Applicant enters into USD/CNY deliverable forward(s) with the Bank at the time(s) and at rate(s) determined by the Bank at its sole discretion in relation to each RMB interest payment;
 - (b) under each deliverable forward, the Applicant shall buy from the Bank a RMB amount equal to the relevant RMB interest payable by the Applicant to the Bank under the Financing, in exchange for the USD amount determined at the relevant exchange rate by the Bank at its sole discretion;
 - (c) the settlement date of each deliverable forward shall fall on the relevant due date of RMB interest payment under the Financing, so that on each interest due date, the Applicant shall pay to the Bank the USD amount under the relevant deliverable forward and upon receipt of the USD amount, the Bank would apply the RMB proceeds payable by the Bank under the deliverable forward directly towards settlement of interest payment under the Financing.
 - (3) The rates, amounts, dates and such other terms with respect to the FX Swap and deliverable forwards are to be conclusively determined by the Bank at its sole discretion and will be set out in the confirmations issued by the Bank to the Applicant. The Applicant shall promptly sign and return the confirmations to the Bank. However, any failure of the Applicant to sign and return any confirmations shall not affect the validity and enforceability of the FX Swap and deliverable forwards against the Applicant.
 - (4) The settlement arrangements contemplated in this clause 4A shall not affect any of the Bank’s rights against the Applicant in relation to the Financing amount and interest, and if the Applicant fails to perform any of its obligations under the FX Swap and deliverable forwards, the Applicant shall, in addition to its obligations under the terms of the FX Swap and deliverable forwards, fully indemnify the Bank against all losses, damages, liabilities, costs and expenses sustained or incurred by the Bank as a result of the Applicant’s failure.
5. The Applicant shall indemnify the Bank and the Bank’s delegate(s) on demand (on a full indemnity basis) against all liabilities, losses, damages, demands, expenses and costs (including legal fees), proceedings or actions which the Bank or the Bank’s delegate(s) may suffer or incur under or in connection with the provision of any financing or services to the Applicant.
6. The Bank is authorised to debit any of the Applicant’s accounts for repayment of the Financing provided by the Bank plus any applicable interest, discount and charges, at any time the Bank thinks appropriate.
7. The Bank is irrevocably authorised (but is not obliged) to (i) utilize the presented documents under the Back-to-Back Credit for drawing of the Credit; (ii) negotiate the Documents, prepay a deferred payment undertaking incurred by the Bank or purchase a draft accepted by the Bank under the Credit; and (iii) directly apply the Financing proceeds of the Credit to settle the corresponding drawing(s) under the Back-to-Back Credit without first crediting such proceeds to the Applicant’s account with the Bank, irrespective of discrepancies that may appear on the Documents under the Back-to-Back Credit (all of which, if any, are hereby waived).
8. Without prejudice to other conditions set out in this application, in particular the Bank’s rights under any negotiation, prepayment, purchase or advance (as the case may be) and as security for the Applicant’s obligations and liabilities owing to the Bank, the Applicant assigns to the Bank all the Applicant’s rights and interest in all the present and future receivables, debts and proceeds payable to the Applicant under or in connection with the Credit, the collection transaction (whether D/P or D/A) and the sale transaction(s) relating to such Credit or collection transaction. Such receivables and debts (including all monies and proceeds thereof) may be applied and/or appropriated by the Bank in the manner as the Bank deems fit in or towards discharge of the Applicant’s obligations and liabilities owing to the Bank. The assignment under this paragraph is in addition and without prejudice to the Trade Finance Security Assignment, if any, executed by the Applicant in favour of the Bank.
9. The Bank shall have (i) a pledge and lien over the Documents; and (ii) a pledge over the goods represented by the Documents insofar as such goods are in or come into the Bank’s actual or constructive possession.
10. The Bank shall not be responsible or liable for any act, omission, default, suspension, insolvency or bankruptcy of any correspondent, agent or sub-agent.
11. The Bank shall not be responsible for any delay in remittance or loss in exchange during transmission or in the course of providing any services to the Applicant.
12. The Bank shall not be responsible for loss or delay of any bill of exchange or documents in transit or in the possession of any correspondent, agent or sub-agent notwithstanding that the Bank may choose such courier company or correspondent.
13. The Bank has full authority (but no obligation) at the Bank’s discretion to store and insure the goods at the Applicant’s risk and cost.
14. No person other than the Applicant or the Bank will have any right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) to enforce or enjoy the benefit of any of the provisions of the terms of this application.
15. This application is governed by and shall be construed in accordance with the laws of Hong Kong SAR.