

OVER THE COUNTER BANK GUARANTEE APPLICATION TERMS AND CONDITIONS

(Document Reference No.: AMBIZ/E/OTCBG T&C/04-2020)

REMINDER: The Applicant is advised to read and understand this Over The Counter Bank Guarantee Application Terms and Conditions and the Privacy Notice of AmBank Group (which is available at www.ambankgroup.com). If the Applicant does not understand any of the terms and conditions and/or the Privacy Notice, the Applicant is advised to discuss with the Bank's staff, authorized representative and authorized agent.

In consideration of my/our request to you, AmBank (M) Berhad ('the Bank') to issue the Over the Counter Bank Guarantee ('BG'), for my/our account and in accordance with my/our application, I/we irrevocably and unconditionally agree to fully abide by the following terms and conditions: -

1. I/We hereby agree that the Bank is authorized and shall be entitled to make any payments and comply with any demands which may be made upon the Bank under the BG on or at any time thereafter:
 - (i) without any reference to or authorization from me/us;
 - (ii) without requiring proof that the amounts so demanded are or were due and without the beneficiary of the BG having to assign any reasons for the claims (subject to the terms and conditions of the BG);
 - (iii) without inquiring into the validity, genuineness or accuracy or legality of any document, certificate or statement received by or made to the Bank in respect of the claim or demand made under the BG, I/we shall at all times keep the Bank fully indemnified and hold the Bank harmless against all liability whatsoever in relation to the Bank in making such payment(s).
2. I/We shall indemnify the Bank on full indemnity basis from and against all claims, actions, proceedings, liabilities, damages, losses (including foreign exchange losses), costs and expenses (including but not limited to any legal fees and costs that the Bank may incur in connection with the BG, or in enforcing or attempting to enforce our indemnity contained herein), which the Bank may suffer, incur or sustain by reason or on account of the Bank having issued the BG at my/our request except where such losses or damages are caused by the Bank's gross negligence, willful default or fraud **or as a result of my/our breach or non-compliance with the Strategic Trade Act 2010**. My/Our obligation to indemnify the Bank under this clause shall: -
 - (i) constitute and give rise to a separate and independent obligation;
 - (ii) apply irrespective of any waiver or indulgence granted by the Bank in respect of any other obligation and survive the cancellation and termination of the trade facility/BG lines offered by the Bank to me/us.
3. I/We shall assume and undertake (a) all foreign exchange conversion or fluctuation risks, rates and losses and/or (b) to reimburse or settle or pay the Bank for any advances made against the BG claims whether booked or earmarked in foreign currency or Malaysian Ringgit equivalent against the trade facility/BG lines offered by the Bank to me/us.
4. The Bank is fully authorized by me/us:
 - (i) to debit a sum sufficient to cover the Bank's total liability under the BG from our current/saving account(s) or any other account with the Bank at any time; and/or
 - (ii) to combine, consolidate or merge all or any or all of my/our accounts with the Bank or debit the said sum or part thereof at any time; and/or
 - (iii) to set aside any other moneys held by the Bank for our account and benefit; and/or
 - (iv) to set-off (with the giving of prior notice of such time as may be specified in writing to us) against the placement held by the Bank under clause 9 below and to apply it or any portion thereof towards the reimbursement and indemnification of any sum of money the Bank may have been called upon to pay by reason of and in accordance with the terms and conditions of the BG as aforesaid. I/We acknowledge and agree that the Bank may exercise such rights concurrently or otherwise with other rights and remedies that the Bank may have against me/us.

I/We agree and acknowledge that ownership of and title to the sum debited pursuant to clause 4 above shall vest absolutely in the Bank from the date the Bank makes the debit as stated above.
5. I/We further authorize the Bank to further debit our current/saving account(s) at any time and as and when requested by the Bank, I/we shall deposit with the Bank immediately the sum of cash and/or other forms of goods or assets acceptable to the Bank as collateral and sufficient in value to cover the Bank's liabilities (whether actual or contingent, primary or collateral and several or joint) due to insufficient funds debited in advance under the preceding clause to meet my/our obligations to the Bank in respect of the BG from the date on which our current/saving account(s) have been debited in advance under the preceding clause until the date on which I/we are required to reimburse the Bank for payments made by the Bank or its agent under the BG.
6. I/We shall pay all commission, charges, stamp duty and other fees and expenses in connection with this application and/or the BG. The commission and charges are as per the Bank's tariff in the Bank's website at www.ambankgroup.com/eng/Business/TransactionBanking/Tariffs/Pages/TradeFinance.aspx. I/We acknowledge that the commission is chargeable on the amount stipulated in the BG for the full liability period inclusive of the claims period (if any) at the rate as may be prescribed by the Bank from time to time. I/We irrevocably authorize the Bank to debit our account for any amount equivalent to all commission, charges, stamp duty and other fees and expenses in connection with this application and/or the BG. I/We hereby agree that any early termination or cancellation of the BG for any reason whatsoever shall not entitle me/us to any refund of commission and/or charges paid to the Bank.

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7. I/We hereby acknowledge that: -
- (i) unless expressly stated otherwise, the parties agree that any charges, commission, fees, expenses or similar amount to be used in the calculation of such charges, commission, fees, expenses ("Charges") is exclusive of any government taxes, including but not limited to, by way of example and not limitation, sales and services tax (SST), consumption tax, consumer tax, indirect tax, duties, levies or any other taxes which may now be or hereafter imposed by the Government of Malaysia.
 - (ii) if any supply made under or in connection with this terms and conditions is subject to any government taxes, the Bank may increase the consideration provided for by the amount of the government taxes imposed and recover additional amount from me/us in addition to the Charges. In this regard, I/we irrevocably authorize the Bank to debit my/our account for the full government taxes amount.
8. I/We acknowledge that the indemnity and agreement to the Bank contained herein are irrevocable and shall remain in full force and effect:
- (i) until the BG has been returned to the Bank for cancellation; or
 - (ii) until the beneficiary of the BG has given a written confirmation discharging us and the Bank from all liabilities under the BG; or
 - (iii) until the lapse of thirty (30) days from the expiry of the validity period of the BG and claims/demands period (if any) and the Bank is satisfied that (a) it has not made any payments under the BG and no claims/demands are under the BG; and (b) there are no other restrictions or considerations (whether legal or equitable) which restricts the Bank from making the said payment to me/us whichever is the earliest.
9. I/We further acknowledge that until the occurrence of any one of the events set out in clause 8 above:
- (i) the Bank shall continue to hold all moneys and/or cash and/or whatever goods/assets I/we have placed with the Bank as collateral and/or payment for the issuance of BG and until the BG has been returned to the Bank for cancellation;
 - (ii) my/our indemnity contained herein shall continue to be valid and remain in full force and effect.
10. For BG application which is fully backed by cash, I/we agree to deposit with the Bank prior to the issuance of the BG or at any time the Bank may determine at its discretion, the sum of minimum 100% of cash equivalent to the full amount of the BG to be issued by the Bank or any sum the Bank may determine at its discretion. The deposit amount shall be denominated in Malaysian Ringgit or other foreign currency at the Bank's discretion.
11. I/We hereby agree that in addition to any of the Bank's other rights or security over cash, the Bank shall have a lien on the cash, whether the guaranteed sum under the BG shall be due at the time or not.
12. Until the occurrence of any one of the events set out in clause 8 above, provided that the Bank is satisfied that there will be no further claims or liabilities arising under or in connection with the BG, the Bank shall pay to me/us the cash payment placed equivalent to the full amount of the BG less any payment made or to be made by the Bank pursuant to any claim arising under or in connection with the BG. The aforesaid payment by the Bank shall be without any interest and shall be less deductions to be made by the Bank as permitted under the terms and conditions stated herein. I/We hereby acknowledge that I/we shall not demand any early repayment of the cash and the Bank has no obligation to make any early repayment of the cash.
13. In the event of any claim made against the BG issued and for any reason whatsoever the amount debited by the Bank in accordance with clause 4 or clause 5 above cannot be retained by the Bank, the Bank shall be entitled to the right of immediate settlement and shall charge interest at 3.5% p.a. above the Bank's prevailing Base Lending Rate (as defined below) from the date of payment of claim up to the date of full settlement by me/us to the Bank (as well after as before judgment). For the purpose of the clause above, "Base Lending Rate" means the rate (by whatever name called) that is from time to time quoted by the Bank as its base lending rate.
14. I/We shall read and understand the contents of the BG to be issued by the Bank and in the event we do not understand the legal implication of the contents of the BG, I/we shall seek an independent legal advice on the same and I/we hereby agree and acknowledge that we shall not hold the Bank responsible for any loss that I/we may sustain or incur as a result of the Bank issuing the BG except where such loss is caused by the Bank's gross negligence, willful default or fraud.
15. Any demand, notice, request in connection with this application and/or the BG shall be in writing and shall be delivered personally, or by ordinary post with certificate of posting or ordinary post or facsimile (followed by post) or electronic mail to the addresses given in this application or at such other address as the recipient may have notified to the other party in writing. Proof of posting or despatch of any notice shall be deemed to be proof of receipt: -
- (i) if it is personally delivered, at the time of delivery and duly acknowledged;
 - (ii) in the case of an ordinary post with certificate of posting, on the second (2nd) Business Day after posting;
 - (iii) in the case of a facsimile when received in a readable and legible form, on the Business Day immediately after transmission Provided Always That the sender has received an answer back confirmation; and
 - (iv) in the case of electronic mail, at the time when actually received in readable form.
- No change in the address of the Applicant howsoever brought about shall be effective or binding on the Bank unless actual notice of the change of address has been given to the Bank.
16. I/We hereby agree that all rights, obligations and liabilities arising from the BG as aforesaid shall be construed and determined in accordance with the laws of Malaysia and the courts in Malaysia shall have exclusive jurisdiction to hear any dispute arising from or under the BG.
17. I/We hereby declare that, as at the date hereof there is no winding up, corporate voluntary arrangement, judicial management, scheme of compromise or arrangement, reconstruction, amalgamation order entered or winding up petition filed against me/us.

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18. I/We hereby irrevocably agree and permit the Bank and/or its officers to disclose any information, record of or information relating to my/our account/transactions, to: -
- (i) Bank Negara Malaysia, Central Credit Unit, Guidelines on Dishonoured Cheques Information System, Central Credit Reference Information System (CCRIS) or any other bureau or credit reporting agency or credit rating agency whether or not established pursuant to Malaysian legislation or any other governmental or regulatory authority/body, or enforcement agencies authorized under the Financial Services Act 2013, Cagamas Berhad, Credit Guarantee Corporation or such other authority having jurisdiction over the Bank or anybody established by a body, agency, or authority having authority or jurisdiction over the Bank and to any third party, if required by any law;
 - (ii) any central depository or authorized depository agent (as those terms are defined in the Securities Industry (Central Depositories) Act 1991);
 - (iii) any party providing security to secure our transactions hereunder or banking facilities with the Bank (“security party”) or any of the Bank’s potential transferee or assignee;
 - (iv) any person proposing or intending to make or tender payment towards our liabilities under the banking facilities with the Bank or pursuant to transactions hereunder; or to any person following the occurrence of an event of default;
 - (v) any person where such disclosure is, in the Bank’s opinion, necessary for or related to the review, due diligence or enforcement or protection or the attempted enforcement or protection of any of the Bank’s rights or interests;
 - (vi) any person pursuant to any corporate voluntary arrangement, judicial management, scheme of compromise, reconstruction, amalgamation, arrangement, composition, restructuring or any proposed arrangement, composition or restructuring between our creditors and/or the creditors of any security party;
 - (vii) AmBank Group and to any person or company which are providing any services and expertise to the Bank relating to legal, accounting, auditing, credit, administration, processing, data management or other advisory services; and
 - (viii) the debt collection agents appointed by any company under the AmBank Group.

I/We irrevocably consent to the Bank disclosing our credit information (as defined under the Credit Reporting Agencies Act 2010) to any credit reporting agency in Malaysia and authorize the Bank to receive our credit report (as defined under the Credit Reporting Agencies Act 2010) from the credit reporting agency. I/We irrevocably consent with the Bank that such disclosure of credit information and obtaining of credit reports can be performed by the Bank at any time during and/or after the relationship of banker and customer between the Bank and myself/us has ceased, including when there is any default/outstanding amount due to the Bank from me/us.

For the purpose of these terms and conditions, AmBank Group is referring to the Bank’s related corporations (as defined in the Companies Act 2016) incorporated inside or outside of Malaysia. This clause shall survive the termination of this document and/or transactions contemplated hereunder.

19. I/We hereby confirm that I/we have chosen the language in this document as the language of this document. This chosen language shall prevail in the event of differences in meaning over the version of this document in any other language.
20. Any provision contained in the terms and conditions stated herein which is illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to such extent without invalidating the remaining provisions. Any such illegality, prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal, void or unenforceable any such provision in any other jurisdiction.
21. The terms and conditions stated herein shall be binding on and inure for the benefit of the successors in title of the Bank and my/our heirs, successors in title and personal representative.
22. The Bank shall have the right to review and revise these terms and conditions at any time by providing a written notice of 21 days to me/us.
23. I/We confirm having read, understood and I/we agree to be bound by the Privacy Notice of AmBank Group (which is available at www.ambankgroup.com) and this clause, as may relate to the processing of my/our personal information. For the avoidance of doubt, I/we agree that the said Privacy Notice shall be deemed to be incorporated by reference into the terms and conditions stated herein.

I/We hereby confirm that we have read, understood and acknowledged the terms and conditions of this application and fully authorize the Bank to proceed with the provision of the service. I/We hereby represent and undertake to the Bank that we and our Authorized Signatory(ies) have the power, authority and capacity to execute, deliver and perform the terms and conditions stated herein and that the entering into the BG with the Bank and the acceptance of the terms and conditions stated herein by us and our Authorized Signatory(ies) have been duly authorized by our directors and shareholders and they constitute legal, valid and binding obligation on us.

Authorized Signatory(ies)
With Company’s Authorized Rubber Stamp

Note: This application is to be signed by the Applicant’s Authorized Signatories. Rubber stamp is not required for an individual Applicant. For the avoidance of doubt, Authorized Signatories for the purpose of this application means any person(s) authorized and mandated in writing by the Applicant to operate the deposit account maintained with the Bank. The Applicant is obliged to inform the Bank should there be in any changes in the Authorized Signatory(ies).