



TERMS AND CONDITIONS FOR CREDIT FACILITIES GRANTED by HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce

GENERAL PROVISIONS

§ 1

Initial Provisions and Definitions

- 1) The Terms and Conditions for credit facilities granted by HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce (hereinafter referred to as the “**Terms and Conditions**”) have been issued by HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce (hereinafter referred to as the “**Bank**”) in accordance with Art. 109 Section 1 Points 2 and 4 of the Banking Law in conjunction with Art. 384 of the Civil Code and contain provisions binding upon the Borrower and the Bank and referring to credit facilities unless the Parties otherwise agree on their rights and obligations.
- 2) Subject to the provisions of § 1 Section 3 below, the Terms and Conditions shall apply to all facility agreements, and in particular to overdraft facility, revolving facility and non-revolving facility agreements provided that such facilities refer to these Terms and Conditions.
- 3) These Terms and Conditions shall not apply to facility agreements with Consumers.
- 4) Unless otherwise specified in the Agreement, terms used in the Terms and Conditions shall have the following meaning:

Advance Repayment Date shall be the first Business Day after the last Interest Period, however no later than on the Maturity Date.

Finance Documents shall mean the Agreement, Terms and Conditions, an agreement for the keeping of an account and any and all document pursuant to which a Security Interest was or is to be established, as well as any other document defined by the Borrower and the Bank to be a Finance Document.

Instruction shall mean a Payment Order and Notice of Request for Drawdown of an Advance.

Business Day shall mean each and any day except for Saturdays, Sundays and other bank holidays in the Republic of Poland, on which the Bank is open for business as covered by these Terms and Conditions, and in the event that the Currency of the Facility is any currency other than zloty, also a day on which the banks from the country of such other currency are open for business and settlements of accounts; additionally, in the event that the euro is the Currency of the Facility, any day that is not a TARGET Day shall not be considered to be a Business Day.

TARGET Day shall mean a day on which TARGET2 (Trans-European Automated Real-time Gross Settlement Express Transfer) is operational and settlements for the payments in euro are made.

EUR and **euro** means the single currency unit of the Participating Member States.

EURIBOR shall mean the Euro Interbank Offered Rate determined by the European Money Market Institute (or any successor of that entity as the administrator of the Euro Interbank Offered Rate) announced on the appropriate screen of the Thomson Reuters service or, if the agreed screen is replaced or service ceases to be available, another equivalent screen or service announcing the appropriate interest rate specified by the Bank after consultation with the Borrower.

Group shall mean the Borrower and any entities that Control the Borrower as well as any entities Controlled either by the Borrower or by entities that Control the Borrower.

Material Adverse Effect shall mean any and all events or circumstances which have or might have a material adverse effect on: (i) the business, asset components, financial position or prospects of the Obligated Entity; or (ii) the Obligated Entity's ability to duly perform its obligations arising pursuant to any Finance Document; (iii) or the validity, legality or enforceability of a Finance Document. If the Terms and Conditions or the Agreement so provide, the Material Adverse Effect shall also be specified for other entities being members of the Group.

Client shall mean an entity applying for a Facility and the Borrower.

Civil Code shall mean the Civil Code of April 23rd, 1964 as amended.

Consumer shall mean a consumer in the meaning of the Civil Code.

Control shall mean a situation where one entity: i) holds, whether directly or indirectly through other entities, a majority of votes in the corporate bodies of another entity, including under arrangements with other entities; or ii) is authorised to appoint or dismiss a majority of the members of management or supervisory bodies of another entity or iii) at least one half of the management board members of the other entity are simultaneously management board members, commercial proxies or managers of the first entity or another entity which Controls the first entity.

Advance Early Repayment Cost shall mean the difference between the amount of interest that the Bank would have received in the period from the day following the day of the Advance's early repayment till the day on which the Advance

was to be repaid pursuant to the Agreement, and the amount of interest that the Bank may obtain during the same period by depositing the prepaid amount of the Advance on the interbank market.

Participating Member State means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to the Economic and Monetary Union.

Facility shall mean an Overdraft Facility, Revolving Facility, Non-Revolving Facility and any other credit facility granted by the Bank on terms stipulated in the Agreement.

Non-Revolving Facility shall mean a medium and long-term credit facility made available by the Bank in the form of Advances. The repayment of each part of the Facility decreases the indebtedness of the Borrower and may not be utilised again.

Revolving Facility shall mean a credit facility made available by the Bank in the form of short-term Advances. Repayment of each Advance decreases the indebtedness of the Borrower each time. The Facility may be utilised again in the form of Advances, up to the amount of the Limit.

Overdraft Facility shall mean an option to carry out operations that debit an Account and are not covered by the funds in the Account, up to the amount of the Limit determined in the Agreement. Each repayment of the indebtedness makes it possible to utilise the facility again up to the amount of the Limit.

Borrower shall mean an entity which was granted the Facility under the Agreement.

LIBOR shall mean the London Interbank Offered Rate determined by ICE Benchmark Administration Limited (or a successor of that entity as the administrator of the London Interbank Offered Rate), announced on the appropriate screen of the Thomson Reuters service or, if the agreed screen is replaced or service ceases to be available, another equivalent screen or service announcing the appropriate interest rate specified by the Bank after consultation with the Borrower.

Limit shall mean the maximum amount of the Facility denominated in the Currency of the Facility that may be at the disposal of the Borrower.

Limit of Credit Concentration shall mean the limit of the admissible credit risk exposure of the Bank towards the Client, as defined by the law and, in particular, the EU legal standards.

General Terms and Conditions shall mean "The general terms and conditions of opening and maintaining bank accounts with HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce".

Affiliated Person shall mean each and every natural person, legal person of an institution of Polish law or any other law, not having any legal personality, which bears a capital relation to the Obligated Entity, where the capital relation means holding, either directly or indirectly, the title to not less than 10% of the shares, shares of stock or other participation units that authorize their holder to exercise owner's rights to the Obligated Entity or any other entities bearing a capital relation (as specified above) to the Obligated Entity.

Events of Default shall mean events of default of the conditions of the Agreement set forth in § 15 of the Terms and Conditions or set forth in any other Finance Document as Events of Default as well as any other event which, in combination with the serving of a notice or the lapse of a grace or remedy period or the making of a relevant determination or the fulfilment of any of the conditions might constitute such an Event of Default.

Interest Period shall mean the interest as set forth in the Agreement, or in the Notice of Request for Drawdown of an Advance, if the Agreement so provides.

Availability Period shall mean the period during which, as provided in the Agreement and in these Terms and Conditions, the Facility may be disbursed.

FATF Public Statement Jurisdiction shall mean a jurisdiction identified by the Financial Action Task Force ("FATF") in its Public Statement as subject to a FATF call on its members and other jurisdictions (i) to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction(s); and/or (ii) to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and financing of terrorism (ML/FT) risks emanating from the jurisdiction(s) [available at <http://www.fatf-gafi.org/>].

PLN or zloty shall mean the payment unit legally binding in the Republic of Poland.

Obligated Entity shall mean the Borrower and any other third party bearing personal liability towards the Bank for the liabilities arising pursuant to a Finance Document.

Payment Order shall mean any instruction of the Borrower whose execution by the Bank shall change the balance of funds gathered in the Account.

Banking Law shall mean the Banking Law of August 29th, 1997 as amended with the relevant implementing regulations.

Account shall mean the Client's current account or other account maintained with the Bank.

Sanctions shall mean financial sanctions, economic, trade or other restrictions administered or imposed by the Finance Minister of the Republic of Poland in agreement with the General Inspectorate of Finance Information [*Generalny Inspektor Informacji Finansowej – GIIF*], United Nations' Security Council, the European Union, French Republic, US Department of Treasury's Office of Foreign Assets Control (OFAC), US Department of State, Her Majesty's Treasury or Hong Kong Monetary Authority.

Table shall mean the "Table of fees and charges" valid at the Bank as at the day on which the Agreement is signed.

Maturity Date shall mean, as set forth in the Agreement, a day on which the Borrower is obliged to repay the debt under the Finance Document, including the Facility in full, including interest, commissions and other fees due to the Bank.

Advance shall mean a part or the whole of the granted amount of the Revolving Facility or Non-Revolving Facility that is made available to the Borrower on a day and in the amount determined in the Agreement.

Agreement shall mean any agreement under which the Bank grants the Facility.

Act on Certain Financial Collateral shall mean the Act of 2 April 2004 on certain financial collateral as amended.

Restructuring Law shall mean the Act of 15 May 2015 – Restructuring Law as amended or substituted by any other legal act.

Bankruptcy Law shall mean the Act of 28 February 2003 – Bankruptcy and Rehabilitation Law as amended or substituted by any other legal act.

Currency of the Facility shall mean a currency determined in the Agreement in which the Limit is denominated.

Utilisation Currencies shall mean currencies determined in the Agreement in which the Borrower may utilise the Facility.

WIBOR shall mean the Warsaw Interbank Offered Rate determined by GPW Benchmark SA. (or a successor of that entity as the administrator of the Warsaw Interbank Offered Rate) announced on the appropriate screen of the Thomson Reuters service or, if the agreed screen is replaced or service ceases to be available, another equivalent screen or service announcing the appropriate interest rate specified by the Bank after consultation with the Borrower.

Notice of Request for Drawdown of an Advance shall mean an irrevocable notice of request for drawdown of an Advance, submitted by the Borrower, generally in the form specified in the Agreement.

Security Interest shall mean any security interest on the Bank's claims in respect of a Finance Document, including also the Facility.

Financial Indebtedness shall mean any and all indebtedness for or in respect of: (i) monies borrowed; (ii) amounts obtained on the basis of any acceptance credit or by any bills discounts; (iii) amounts obtained on account of any instruments purchased by the issuer's financing entities or in respect of any issue of bonds, bills, notes, capitals taken up by the issuer's financing entities or any similar instrument; (iv) liabilities under any lease agreement, instalment payment purchase or any other agreement with a similar effect which, in accordance with the International Finance Reporting Standards, are treated as a finance lease; (v) receivables sold or discounted (other than any receivables to the extent that they are sold on a non-recourse basis); (vi) amounts obtained on account of any other transaction (including any forward sale or purchase transactions) which has the commercial effect of a borrowing; (vii) any derivative transaction protecting against or benefiting from fluctuations in any rate or price and (and the then mark-to-market value of a derivative transaction will be used to calculate the value of a derivative transaction); (viii) liability to shareholders in respect of any payment due for redeemable shares/ shares of stock; (ix) any counter-indemnity obligation in respect of any guarantee, surety, indemnity, performance bond, documentary credit or any stand-by letter of credit; or (x) any other instrument of a similar type issued by a bank or a finance institution; and any amount of liability under any guarantee or indemnity granted with respect to the transactions listed in Items (i) through (x) above.

Creditworthiness shall mean the Client's ability to repay the drawn Facility, including interest, commissions and other fees due to the Bank on their due dates.

- 5) In these Terms and Conditions references to the plural include the singular and vice versa.
- 6) In these Terms and Conditions hours are provided as per the Warsaw time.

§ 2

Costs

- 1) The Bank shall not be liable for costs incurred by the Client in connection with the fact that it applied to the Bank for the Facility, or those related to the entry into the Agreement.
- 2) The Client undertakes to cover all costs of the Bank related to the granting of the Facility and the establishment of Security Interests, the costs incurred by the Bank as the costs of legal advisors, technical and financial experts, property valuations, translations/interpretations and also costs of possible stamp duties and other fees due under or in respect of the granting of the Facility or establishment of Security Interests.
- 3) The Client undertakes to cover all costs of the Bank, including costs of the Bank enforcing its rights under the Agreement, Terms and Conditions and Security Interests.
- 4) If after the date of Agreement, the following arise or are imposed on the Bank: (i) additional costs (or there is any increase in additional costs) related to the granting or administration of the Facility and in the event that such costs arise or increase as a result of the Bank's compliance with the mandatory provisions of law or the requirements of finance supervision, (ii) any new public and legal charges related to the Facility or there is any increase in the amount thereof which is not covered by the regulation of § 10 Section 5 hereof, the Borrower shall be required to cover such costs, at the Bank's written demand, within 30 (thirty) days following the receipt of the demand.
- 5) Unless otherwise provided in the Agreement, the Bank shall be entitled and the Client hereby authorises the Bank to withdraw funds from the Account in respect of the costs mentioned in § 2 Section 2, 3 and 4 above and in § 10 Section 5, without any separate instructions from the Client.

GRANTING OF A FACILITY

§ 3

Agreement

The Facility shall be made available on the basis of an Agreement.

§ 4

Purpose of the Facility

- 1) The aim of the financing and purpose of the Facility are set forth in detail in the Agreement.
- 2) The Borrower undertakes to utilise the Facility for purposes determined in the Agreement.
- 3) The Bank is entitled but not obliged to monitor or verify the utilisation of the Facility.

§ 5

Making the Facility Available

- 1) The Facility shall be made available to the Borrower during the Availability Period, subject to §6 Section 1 below, upon fulfilment by the Borrower of the conditions set forth in the Finance Documents, and in particular upon establishment of Security Interests in form and content accepted by the Bank and in the way determined in the Finance Documents.
- 2) If the Bank makes the Facility available in a currency other than the Currency of the Facility, the Bank has the right to convert the amounts made available under the Agreement to the Currency of the Advance at the current rate valid at the Bank or at a rate agreed on with the Borrower.

§ 6

Forms of the Utilisation of the Facility

- 1) The Facility may be utilised during the Availability Period, under the condition that there is no Event of Default, in the forms provided for in the Agreement, and in particular in the form of:
 - a) Overdraft Facility,
 - b) Revolving Facility,
 - c) Non-Revolving Facility.
- 2) The Bank's undertaking to disburse the Facility shall expiry upon the lapse of the last Business Day of the Availability Period.
- 3) The Overdraft Facility shall be utilised by way of the execution of the Payment Orders by the Bank against the account, on dates determined in the agreement pursuant to which the Bank keeps the Account, which shall cause a debit balance in the Account or result in an increase of the debit balance in the Account, up to the amount of the Limit.
- 4) The Revolving Facility or Non-Revolving Facility shall be utilised by way of a drawdown of an Advance. The Advance shall be made available to the Borrower on the Account, unless the Agreement provides otherwise, after the submission to the Bank of a duly completed Request for Drawdown of an Advance not later than by 11 am at least 2 (two) Business Days before the suggested date of the utilisation of the Advance.
- 5) The Request for Drawdown of an Advance shall be deemed to be duly completed if it is signed by a person/people authorised to represent the Borrower and determines:
 - a) the amount of the Advance whose minimum amount may be stipulated in the Agreement provided that the suggested amount of the Advance shall not exceed the Limit; and
 - b) the Currency of the Advance if the Agreement grants to the Borrower the right to advance the Facility in any currency other than the Currency of the Facility;
 - c) the Interest Period chosen by the Borrower, if not specified in the Agreement.
- 6) The date of activating the Advance, as specified in the Request for Drawdown of an Advance must fall within the Availability Period and the Advance Repayment Date may not fall after the Maturity Date.
- 7) If any amount of the Facility is activated in any Currency of the Advance other than the Currency of the Facility, in order to decrease the Limit determined in the Currency of the Facility by the utilised amount of the Facility, the utilised amount of the Facility is converted to the Currency of the Facility as follows:
 - a) if the Currency of the Facility is PLN, the utilised amount of the Facility is converted to PLN at the average rate of NBP (National Bank of Poland) for the currency in which the amount of the Facility has been utilised, valid as at the day on which the determination was made;
 - b) if the amount of the Facility has been utilised in PLN, the utilised amount of the Facility is converted to the Currency of the Facility at the average rate of NBP for the Currency of the Facility, valid as at the day on which the determination was made;
 - c) if both the Currency of the Facility and the currency in which the amount of the Facility was utilised are different from PLN, first the utilised amount is converted to PLN at the average rate of NBP for the currency in which the Facility was utilised and then the utilised amount denominated in PLN is converted to the Currency of the Facility at the average rate of NBP for the Currency of the Facility, valid as at the day on which the determination was made.
- 8) In case of utilising the Facility in the currency other than the Currency of the Facility, the aggregate utilisation of the Facility after such utilisation may not exceed 90% of the Limit.
- 9) The Bank reserves the right to refuse to execute an Instruction if:
 - a) the execution of the Instruction would make the Facility available at variance with the conditions of any Finance Document;
 - b) the Event of Default occurs or the Bank has any reason to terminate the Agreement;

- c) the Instruction is received by the Bank during the period of notice of any Agreement entered into on the basis of the Terms and Conditions;
- d) the Instruction is inconsistent with the provisions of any Finance Document;
- e) the conditions for granting the Facility determined in the Finance Documents have not been fulfilled;
- f) the execution of the Instruction would result in the occurrence of any Event of Default, the exceeding of any Limit or the Limit of Credit Concentration.

§ 7

Conditions Precedent

- 1) The Facility shall be made available to the Borrower upon the fulfilment of the following conditions:
 - a) the Bank receives the original Agreement, as well as other Finance Documents duly signed by the Borrower or other Obligated Entity;
 - b) Security Interests are established in a form satisfactory to the Bank, generally in the form valid at the Bank as at the date of executing the Agreement, as well as (if required in the assignment agreement) the Bank receives the confirmation from the debtor of receivables about the acknowledgement of assignment of receivables if the assignment of the Obligated Entity's receivables is one of the Security Interests;
 - c) no Event of Default takes place;
 - d) the Bank receives (i) a certified copy of the current constitutional documents of the Borrower or other Obligated Entity (ii) an extract from the register of entrepreneurs or other relevant record concerning the Borrower or other Obligated Entity (with valid data but never older than 3 months as at the date of making the Facility available), (iii) a permit of the bodies of the Borrower or other Obligated Entity to enter into and perform Finance Documents (if required) and (iv) other documents that the Bank may reasonably require in order to verify the validity and effectiveness of the entry into and performance of the Agreement;
 - e) the Bank receives an original or a certified copy of a power of attorney authorising the person or people named therein to sign Finance Documents on behalf of the Obligated Entity, to submit the Instruction and, as the case may be, other documents on behalf of the Obligated Entity, together with the specimen signature card of such a person(s);
 - f) the Bank receives current (not older than 1 (one) month as at the date of making the Facility available) extracts from the Social Security Agency and Tax Office confirming no overdue liabilities on the part of the Obligated Entities;
 - g) the Bank receives current (not older than 1 (one) month as at the date of making the Facility available) certificates confirming that the assets (including the shares and shares of stock) that are one of the Security Interests are free of any registered pledges or tax liens;
 - h) any and all fees and commissions due to the Bank in respect of the Facility, payable before the Facility is made available, are paid;
 - i) the Obligated Entity fulfils all other conditions for the Facility to be made available and utilised, as specified in the Finance Documents; and
 - j) the Bank receives any other documents the receipt of which shall be deemed by the Bank as necessary or justified before making the Facility available.
- 2) If the utilisation of the Facility in a foreign currency is subject to restrictions provided for in the provisions of law, the Borrower shall utilise the Facility upon its fulfilment of the requirements determined in these provisions.
- 3) The Bank may waive any of the conditions precedent as set out in Section 1 above and make the Facility available to the Borrower. Such waiver may be expressed in written form or is purported to be made by the Bank through the disbursement of the Credit.

§ 8

Interest, Margins, Commissions and Fees

- 1) The Borrower shall pay the Bank interest in respect of the utilised amount of the Facility calculated in accordance with the Agreement.
- 2) The interest payable shall be calculated on a daily basis from and inclusive of the day following the day of the utilisation of the given amount of the Facility to and inclusive of the day of its repayment and shall be calculated by reference to a year of 365 days for utilisation in PLN or GBP and 360 days for EUR or USD or otherwise as agreed on in the Agreement.
- 3) If the costs of the Bank's financing in the Currency of the Advance by the deposit on the interbank market shall exceed the base rate stipulated in the Agreement, the Bank has the right to increase the base rate for the relevant Interest Period to the level equal to the cost of the Bank's financing on the interbank market. The Bank shall promptly inform the Borrower about such increase. The comparison of the costs of financing with the base rate stipulated in the Agreement shall take place on the date of setting the base rate for the relevant Interest Period.
- 4) If it is not possible to set the applicable base rate for the relevant Interest Period, the Bank and the Borrower shall agree on any other basis for setting the base rate. In the event that within 3 (three) Business Days following the receipt by the Borrower of the Bank's notice of the inability to set the applicable base rate no other basis for calculating the interest rate is set, the Bank shall set the interest rate individually in line with then prevailing market practice, in particular on the basis of the quotations given by leading domestic banks for the Currency of the Advance, selected by the Bank at its sole discretion.

- 5) A change of the interest rate due to a change in the base rate shall not constitute an amendment to the Agreement and shall not require its termination.
- 6) Notwithstanding the interest rate applicable to the Facility as defined in the Agreement, in the event that any provision of law or regulation of supervising authority applicable during the term of Agreement results in the Bank being obliged to create, withhold, maintain or increase specific reserves, special funds, deposits or fees resulting from the granting of Facilities by the Bank, the Bank shall be entitled to change the amount of margins and fees and the manners of calculating the same in proportion to the changes introduced by such provisions of law or regulations. The above-mentioned changes shall take effect as of the date specified by the Bank, in accordance with the effective date of the above-mentioned provisions of law. This provision shall not exclude the application of § 20 Section 11 of the Terms and Conditions.
- 7) Interest in respect of the Overdraft Facility shall be payable in arrears on the last Business Day of a calendar month, however no later than on the Maturity Date.
- 8) Unless the Agreement provides otherwise, Interest in respect of each Advance of Revolving Facility and Non-Revolving Facility shall be payable in arrears on the first Business Day following the end of the relevant Interest Period, however no later than on the Maturity Date.
- 9) The Bank may collect an arrangement fee in respect of the executed Agreement in the amount determined in the Agreement. The arrangement fee is payable within 3 (three) Business Days following the Agreement's effective date, no later, however, than on the day on which the Facility is made available, by debiting the Account, or otherwise as agreed on in the Agreement.
- 10) The Bank may collect a commitment fee, in the amount determined in the Agreement, calculated per annum as the appropriate percentage of the amount of the Facility that has been made available but has not been utilised. This fee is payable monthly, at the end of a calendar month by debiting the Account, or otherwise as agreed on in the Agreement.
- 11) The Bank may collect other commissions and fees determined in the Agreement or in the Table. The fees and commissions shall be payable by the Borrower on the date of performing the action that they relate to, unless the Agreement or the Table state otherwise.
- 12) All commissions and fees are calculated in the Utilisation Currency, unless the Agreement stipulates otherwise.
- 13) Commissions and fees that have been paid are non-refundable.
- 14) If overdue receivables arise as a result of the Borrower's failure to repay the Facility on determined dates, the Borrower shall pay the Bank default interest, calculated each day of delay on the amount of overdue receivables at the interest rate determined in the Agreement for overdue receivables. Default interest becomes immediately due upon their calculation.
- 15) The Borrower hereby releases the Bank from liability for any losses suffered by the Borrower due to a payment not made on time if any amount has been made immediately due.

§ 9

Facility Repayment

- 1) The Borrower is required to repay the Facility on the dates and in the manner stipulated in the Agreement. The entire portion of the Facility, together with accrued interest and the fees and commissions due to the Bank must be repaid on the Maturity Date at the latest.
- 2) If the Maturity Date falls on any day other than a Business Day, then the Facility should be repaid on the next Business Day, if any, in such a calendar month, or in the event that there is no such day, on the preceding Business Day.
- 3) Unless the Agreement provides otherwise, any and all payments under Finance Documents, including the repayment of Facility together with accrued interest as well as the fees and margins payable to the Bank, shall be made by means of debiting the Account. The Bank shall be authorized to collect from the Account the funds for the repayment of due debt under a Finance Document without the need to obtain a separate instruction from the Borrower. The Borrower shall be required to procure for the funds sufficient to fully cover its due and payable liabilities under Finance Documents to be deposited in the Account by 11:00 a.m. at the latest on the payment day of such liabilities. In such an event, the day on which the Borrower's Current Account is debited with the due amount shall be deemed to be the day of payment.
- 4) At the request of the Bank or if the Agreement so provides, the repayment of debt under a Finance Document, including the Facility repayment, may be made to the account of the Bank. In such event, the day on which the funds are credited to the account shall be deemed to be the repayment date.
- 5) If any amount received by the Bank as the repayment of debt under any Finance Document is denominated in a currency other than the Currency of the Facility, the Bank shall convert it to the Currency of the Facility at the current rate valid at the Bank on the day on which the bank receives such an amount, or if the Bank grants its consent for such conversion, at a rate agreed on for that purpose with the Obligated Entity.
- 6) The Borrower shall be entitled to make an early repayment of debt under the Facility or any part thereof before the Maturity Date, by providing the Bank with a notice of such intent not later than 10 (ten) Business Days before the date of the planned early repayment specified in the notice. The date of early repayment must fall on the last day of the Interest Period. A notice shall be irrevocable and it should also indicate the amount of early repayment. Simultaneously with the making of an early repayment, the Borrower shall pay to the Bank any and all interest, fees, margins and costs due in respect of the Facility. The Agreement may define the minimum amount of early repayment.
- 7) The Borrower shall be required to immediately redress, at the Bank's demand, any damage resulting from the repayment of any debt (or any part thereof) under the Facility before the Maturity Date in a manner not compliant with the provisions of Section 6 above.

- 8) The Borrower's liability described in Section 7 above shall include in each and every case the loss of margin or any other loss or expense in relation to the funds borrowed, contracted or utilized to finance the receivables under any Finance Document, including, in particular the Advance Early Repayment Cost.
- 9) If the Bank states that the indebtedness in respect of the Facility that has been utilised but not repaid exceeded the Limit or if an Instruction whose execution will exceed the Limit has been submitted, the Bank may refrain from making the Facility available or from executing such an Instruction. The Bank shall promptly notify this to the Borrower. The Borrower undertakes to repay promptly, however no later than within 2 (two) Business Days from the day of receiving the above notice, the amount of the difference between the value of the indebtedness determined as above and the amount of the Limit.
- 10) The liabilities of the Borrower towards the Bank in respect of the granted Facility that are not repaid on time in accordance with the Agreement or as prescribed in the notice of early repayment made in accordance with Section 6 above, shall become overdue indebtedness.
- 11) Any funds received by the Bank from the Obligated Entity under the Finance Documents or received as a result of enforcement or bankruptcy or restructuring proceedings or other actions undertaken by the Bank in order to satisfy the receivables payable to the Bank are recognised by the Bank on account of its receivables in the following order:
 - a) court and enforcement costs;
 - b) interest calculated in respect of amounts covered by an enforcement title;
 - c) any costs incurred by the Bank in connection with actions undertaken to enforce the Bank's claims, in particular the costs of the establishment of the Security Interest, management of the object of Security and release of Security;
 - d) commissions and fees;
 - e) interest on overdue indebtedness;
 - f) contractual interest;
 - g) principal amount; and
 - h) any other amounts due and not paid pursuant to the Finance Documents.
- 12) The Bank shall be authorized to unilaterally change the order specified in Section 11 above.
- 13) The provision of Section 11 and 12 above shall prevail with respect to any and all indications made by the Borrower or any other Obligated Entity.

§ 10

Payments and Taxes

- 1) Any payments to be made to the Bank in accordance with the Agreement shall be made without any deductions (whether by way of set-off or counterclaim or otherwise). By executing the Agreement, the Borrower waives the right vested in the Borrower pursuant to Article 498 §1 of the Civil Code to set off the Borrower's receivables against the Bank with the Bank's receivables arising pursuant to the Agreement.
- 2) Should any mandatory provisions require any withholding to be made from a payment to be made by the Borrower to the Bank under the Agreement on account of taxes, duties or other charges and other public levies, regardless of how such a withholding is made, then the Borrower will be obliged to repay to the Bank such a revised amount, so that after such withholding the net amount paid to the Bank is equal to the amount which the Bank would have received if no such withholding been made. The Borrower shall promptly notify the Bank if at any time a legal requirement to make any such a withholding (or make the same for an amount higher than required so far) from any amount payable by the Borrower under the Agreement shall be imposed.
- 3) If the Borrower makes any payment under the Agreement that is subject to the obligation to make a withholding from the payment amount to the Bank, then the Borrower shall pay the amount to be withheld from the amount of payment due to the Bank to the relevant authority in the amount and on the date as allowed for such a payment under applicable laws. The Borrower shall deliver to the Bank within 30 (thirty) days after it has made the above payment a receipt in writing evidencing the payment to the relevant authority of all amounts so required to be withheld from such a payment to the Bank pursuant to applicable laws.
- 4) The Bank shall be entitled to set off any of its due and payable claims under the Finance Documents with any due and undue claims of the Borrower against the Bank, irrespective of the place of payment, the branch making the transaction or the currency of each claim. If the claims to be set off are denominated in various currencies, for the purposes of the set-off, the Bank may convert either claim at the exchange rate applicable at the Bank on the set-off date.
- 5) If any new taxes are imposed on the Bank in relation to the Facility following the execution date of the Agreement, the Client shall be required to cover, at the Bank's written demand, any increased costs of the Bank resulting from the tax imposed on the Bank in relation to the Facility. The provisions of the first sentence shall apply to any increase in the tax applicable on the execution date of the Agreement. The provisions of the foregoing sentences shall not apply to any tax burden on the Bank's aggregate income.

§ 11

Security Interests

- 1) In order to secure the claims due to the Agreement, the Client shall procure for Security Interest to be established.
- 2) Notwithstanding any other provisions of these Terms and Conditions or the Agreement, the Bank shall be entitled to demand that additional Security Interest be established and the Borrower (or any other Obligated Entity, as the case may be) agrees to immediately establish or procure for the establishment of such additional Security Interest and cover the costs related thereto,

in the event that in the Bank's reasonable opinion, as a result of any market change or for any reasons attributable to the Borrower or other Obligated Entity, there has been or there is a threat of any decrease in the value of the established Security Interests.

- 3) The Client undertakes to:
 - a) maintain the object of Security in good order and non-deteriorated condition that shall make it possible to satisfy the Bank's claims on it,
 - b) insure the object of Security to the extent that satisfies the Bank and
 - c) pay premiums due in respect of the insurance on the object of Security on time.
- 4) At the request of the Bank the Client shall promptly make it possible to verify the actual and legal condition of the object of Security.
- 5) The Bank shall have the right to use the established Security Interests in the order selected by the Bank.
- 6) In the event of a mortgage has been established in favour of the Bank to secure its claims under the Facility, the Client shall be required, at the Bank's demand, to replace such claims with another claim of the Bank against the Client.

LIABILITIES AND REPRESENTATIONS OF THE BORROWER

§ 12

Liabilities of the Borrower

- 1) Until the Borrower has any due or contingent liabilities towards the Bank under the Finance Documents, the Borrower agree to:
 - a) maintain their legal status as well as any licenses and permits necessary for the continued conducting of their business activity in its form as applicable on the day of executing the Agreement;
 - b) ensure that at any time all claims due to the Bank against the Borrower will rank at least *pari passu* with the claims of all other present or future unsecured creditors of the Borrower (subject to the mandatory provisions of law);
 - c) not establish or allow any mortgage, pledge, security interest (included one that is established under the law) or any other encumbrance to be established over all or any part of the assets, revenues or unpaid share capital of the Borrower or any other Obligated Entity without the prior written consent of the Bank;
 - d) not dispose of all or any part of its assets either in a single or a series of transactions, unless such a disposal is made in the ordinary course of business or is a disposal of assets in exchange for other assets which are of a comparable or superior type or is made as a part of the transaction that is admissible pursuant to any other provision of a Finance Document;
 - e) not grant any authorisation to third parties to have the property of its enterprise, and in particular the Account or other bank accounts, at their disposal without the prior written consent of the Bank;
 - f) keep proper accounting and reporting with respect to its business and have the annual financial statements audited by independent auditors in accordance with the mandatory provisions of law;
 - g) not make any acts which might result in a default under any Sanctions including, in particular, not using, to the extent covered by the Sanctions, either directly or indirectly, any funds disbursed as a part of the Facility to finance: (i) any activity of economic or other nature taking place in a country or within a territory which is, or the authorities of which are subject to Sanctions, or (ii) not lend, contribute or place in any manner whatsoever such funds at the disposal of any entities that engage in any activity in such countries or within such territories or any entities whose registered office is located there, which are incorporated there or are the residents thereof – other than to the extent that such covenant would result in a violation of Council Regulation (EC) No 2271/96, as amended (or any implementing law or regulation in any member state of the European Union or the United Kingdom);
 - h) not, directly or indirectly, use the proceeds of the Facility, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person to fund any activities or business of or with a FATF Public Statement Jurisdiction, any goods originating from a such jurisdiction or any person or entity located, organised or resident in a such jurisdiction or owned or Controlled by such party;
 - i) ensure that none of the Obligated Entities and none of the Affiliated Persons will issue any bearer shares, except for the situations where the Bank has granted a written consent for such an issue;
 - j) implement and ensure that any entity of the Group implement necessary measures and relevant policies and procedures in order to prevent any infringement by any member of the Group of anti-corruption and anti-money laundering laws and regulations in force in any competent jurisdiction; and
 - k) observe any other obligations specified in the Agreement and other Finance Documents.
- 2) The Borrower shall make the settlements relating to commercial transactions and its operating activity through the Bank in the amounts being at least in proportion to the Facility's share in the aggregate amount of banking facilities granted to the Borrower, in particular it undertakes to maintain such proportion on quarterly basis with regard to:
 - a) inward payments received from its commercial partners into the accounts operated by the Bank to all such payments
 - b) volumes (counted in nominal value) of foreign exchange transactions and the hedging transactions securing currency risk, such as forwards, entered into with the Bank to overall volume of such transactionsin the event of a failure to fulfil that obligation, the Bank reserves the right to increase the Bank's margin by 0.5 per cent per

annum or exercise its rights as referred to in § 17 hereof, of which the Bank shall inform the Borrower 7 (seven) Business Days before taking any such action.

- 3) At the request of the Bank, the Borrower shall be required to make, in the form of a notarial deed, at its sole expense, a statement on voluntary submission to enforcement in the manner prescribed in Art. 777 § 1 Clause 5 of the Code of Civil Procedure, covering the principal amount, interest, fees, charges and any other amounts due to the Bank under the Facility as well as any other costs in connection with the granting of the Facility, in the form and with contents satisfactory to the Bank. Unless the Agreement provides otherwise, the Bank shall be entitled to make the aforementioned demand in the event that the Borrower submits to enforcement on the basis of the notarial deed with respect to a payment obligation for the benefit of any other creditor of the Borrower.

§ 13

Information Obligations

- 1) The Borrower agrees to provide the Bank with separate and consolidated (if any) annual financial statements audited by chartered auditors, together with the auditor's opinion attesting that they have been prepared in accordance with the generally accepted accounting standards and truly and accurately reflect the financial standing of the Borrower and the other Obligated Entities, within 30 (thirty) days following the endorsement thereof by the relevant authorities of the Borrower. Simultaneously, the Borrower agrees to deliver to the Bank current financial statement of the Borrower and the other Obligated Entities (F-01 or comparable, internal, quarterly financial statements of the Borrower, or statements prepared for the Finance Supervision Authority [*Komisja Nadzoru Finansowego*]) within 30 (thirty) days of their preparation. Additionally, at the Bank's request, the Borrower shall provide the Bank with other information that the Bank deems to be justified.
- 2) The Borrower agrees to provide (i) current excerpt from the National Court Register [*Krajowy Rejestr Sądowy*] or any other relevant register (in the event of any change to the contents thereof), (ii) information about potential difficulties that pose a threat to the compliance with finance indices and other arrangements made in Finance Documents, (iii) information of any intended change to the legal or ownership status of the Borrower and/ or any other Obligated Entity, as well as any changes to its corporate authorities, (iv) on a quarterly basis, information about any credit facilities contracted by the Borrower, any awarded limits for the opening of documentary credits and guaranteed, any sureties granted and other material on- and off-balance sheet liabilities, (v) information about the engagement or an intent to engage in any negotiations with creditors in relation to any debt restructuring as well as the occurrence of any premises that make it justified to declare bankruptcy under the Bankruptcy Law (or other applicable provisions of law) or open restructuring proceedings provided for in the Restructuring Law (or other applicable provisions of law), (vi) information on instituting winding-up, reorganisation, , bankruptcy, recovery proceedings as well as proceedings concerning recognition of a foreign bankruptcy procedure, or any other proceedings or actions against the Obligated Entity on account of insolvency or a threat of insolvency, of any court, enforcement, arbitration, tax or administrative proceedings, tax inspections or customs and fiscal inspections that are pending or to its knowledge threatening or expected or of any other circumstances that could have a material effect on the business or financial standing of the Obligated Entity, including information on extension of a time limit for a VAT refund, postponement of the payment date for any tax or refusal to return any tax, (vii) any other periodic information and documents that the Bank may reasonably require in connection with the Finance Documents or those that are necessary to evaluate the current financial standing and economic position of the Borrower or other Obligated Entity, as well as (viii) any information specified in Finance Documents.
- 3) The Borrower undertakes to (i) immediately notify the Bank of any instance of its undertaking to another creditor to dispose of an emptied mortgage entry in that creditor's favour, irrespective of the form of such an undertaking and its disclosure in the land and mortgage register; (ii) immediately notify the Bank of reserving the right to dispose of an emptied mortgage entry and making an entry concerning such a right in the land and mortgage register; (iii) immediately notify the Bank of any instance of establishing a mortgage to secure claims under a legal relationship which, in the future, may give rise to further claims securable by that mortgage; (iv) immediately notify the Bank of any instance of replacing a mortgaged claim with another claim, stating the legal basis under which the substituting claim arose, its value and repayment date;
- 4) The Borrower shall be required to immediately notify the Bank of the occurrence of any Event of Default or a situation that might result in the occurrence of any Event of Default;
- 5) The Borrower shall notify the Bank of each opened bank account (with banks and credit institutions other than the Bank) promptly, however no later than within 14 days from the opening date of such an account, stating the account number and exact address of the bank branch that maintains it in the notice.
- 6) The Borrower shall immediately notify the Bank of its submission to enforcement in the manner prescribed in Art. 777 § 1 Clause 5 of the Code of Civil Procedure with respect to a payment obligation for the benefit of any other creditor of the Borrower.
- 7) The Borrower shall be required to render it possible for the Bank to take any other actions related to the evaluation of the financial standing and economic position of the Borrower and evaluate the Security Interests, and present the Bank, at the Bank's request, with information and documents that are necessary to evaluate the standing and assess the position and value of the accepted Security Interests (including the provision of access to the underlying collaterals for the purposes of an inspection to be conducted by an employee of the Bank or an external firm acting in cooperation with the Bank, upon previously notifying the entity providing the Security Interest of such an inspection), and, in particular, the value of real properties, and provide information of its financial standing and economic position.

§14

Representations and Warranties of the Borrower

- 1) Upon entering the Agreement, submitting the Instruction, establishing the Security Interest, the Borrower represents and warrants that:

- a) the Obligated Entities are entities duly incorporated under the laws applicable to their registered office, empowered to enter into the Finance Documents and perform obligations thereunder and that each of their bodies has taken all necessary actions and obtained all necessary resolutions and consents to approve, enter into and perform the Finance Documents and the documents remain to be fully effective and binding;
- b) none of the Obligated Entities and none Affiliated Person issued any bearer shares, except for the situations where the Bank granted a written consent for such an issue;
- c) none of the Obligated Entities, any of Affiliated Persons, any director or officer or any employee or agent is an individual or entity that is, or is owned or controlled by persons that are, located, organised or resident in a FATF Public Statement Jurisdiction
- d) the entry into and performance of the Finance Documents by the Obligated Entities do not violate any laws and do not conflict with any constitutional documents of the Obligated Entities;
- e) no consent, permit, approval or licence of any other person or any state administration authority, court or any office is required to be obtained in connection with the entry into and performance of the Finance Documents, their consistency with the law, validity and enforceability and in connection with the utilisation of the Facility under the Agreement;
- f) Finance Documents and all related documents constitute a legally binding, valid and enforceable obligation of the Obligated Entities whose execution may be enforced against the Obligated Entities in accordance with their relevant conditions;
- g) it has all necessary permits, licences, permissions and other administrative decisions in accordance with the applicable laws for running business activity and has instituted and maintains policies and procedures designed to promote and achieve compliance with any applicable anti-corruption and anti-money laundering laws and regulations;
- h) it fulfils all the requirements of laws related to the protection of the environment against pollution and that it has no knowledge of any premises that may threaten its fulfilment of such requirements in the future. The Borrower shall indemnify the Bank for any losses, claims, costs or other liabilities that may result from a breach of environment protection standards in connection with the granting of the Facility to the Borrower or acceptance of the Security Interest;
- i) no default or is outstanding or will result from the execution or performance of the Agreement or a transaction being the subject of the above that constitutes a default under any document which is binding upon any member of the Group or concerning any of the Group's assets to an extent or in a manner that has or could reasonably have a Material Adverse Effect on any member of the Group;
- j) no court, arbitration or administrative proceedings are pending or to its knowledge are threatening with respect to any member of the Group or are expected that have or whose settlement could have a Material Adverse Effect on any member of the Group; and
- k) since the date of publication of the last financial statement of the Borrower there has been no adverse change in the financial standing of the Borrower that could materially influence the Creditworthiness of the Borrower;
- l) none of the Obligated Entities is in arrears with the filing of any tax returns, declarations or disclosures and/or similar filings; no tax proceedings, tax inspections or customs and fiscal inspections are pending against or, to the Borrower's best knowledge, threaten any Obligated Entity which, if adjudicated adversely, could result in any Material Adverse Effect;
- m) The Obligated Entity has paid the taxes, custom duties, as well as other charges and public levies (including those payable in respect of social security), falling due on the basis of tax returns or assessed by estimation unless: (i) it is in good faith engaged in a legitimate dispute in relation to such taxes, fees and custom duties, and relevant contingencies have been made for them, as disclosed in the financial statements; or (ii) there are no reasonable basis to assume that any failure to pay the same or the assertion of any claim for the payment thereof would result in any Material Adverse Effect;
- n) neither the Borrower) nor any of the entities being members of the Group and no person being a member of the corporate authorities of such entities, and, to the best of the Borrower's knowledge, no employee, representative, agent or affiliated entity of the Borrower, within the meaning of the Act on Accounting, is (i) subject to Sanctions or (ii) has its registered office located or is incorporated or is a resident of the state or territory that is subject to, or whose authorities are subject to Sanctions - other than to the extent that such representation would result in a violation of Council Regulation (EC) No 2271/96, as amended (or any implementing law or regulation in any member state of the European Union or the United Kingdom) or (iii) committed an act, or behaved in a way that may infringe any law or regulation intended to prevent or punish corruption or money laundering in any jurisdiction in which the Borrower or another member of the Group carries on an activity or to which it is submitted;
- o) none of the Obligated Entities has instigated or is the subject or a participant of any of the composition proceedings defined in the Restructuring Law (or other applicable provisions of law), nor has it filed a petition for debt restructuring under Article 75c of the Banking Law;
- p) no petition to declare bankruptcy has been filed by or against any of the Obligated Entities and no proceedings concerning recognition of a foreign bankruptcy procedure have been instigated against said Obligated Entities, nor is any of the Obligated Entities insolvent or threatened by insolvency within the meaning of the definition provided in Article 11 of the Bankruptcy Law (or in any other applicable provisions of law) and all of the Obligated Entities have sufficient own funds to pursue their statutory activities;
- q) it has notified the Bank of all instances of establishing a mortgage and of all instances of replacing or undertaking to replace a mortgaged claim with another claim (substitution), stating the legal basis under which the substituting claim arose, its value and repayment date.

- 2) The above representations and warranties made by the Borrower shall be deemed to be repeated when each subsequent Instruction is submitted and on the first day of each Interest Period as regards the circumstances and facts existing at the given time.

EVENTS OF DEFAULT

§ 15

Events of Default

- 1) The occurrence of any of the events below constitutes an Event of Default:
- a) the Obligated Entity fails to timely pay any sum due under any Finance Document;
 - b) the Obligated Entity fails to perform or performs improperly or otherwise breaches any other provision of any Finance Documents;
 - c) any Security Interest expires, becomes or is held to be void or ineffective, or its value or effectiveness, in the Bank's opinion, is materially impaired and the Obligated Entity;
 - d) the Obligated Entity fails to perform any obligations under agreements entered into now or in the future (including in particular failure to repay any amount to another creditor on an agreed payment date) to which the Obligated Entity is or will be a party or any obligations otherwise binding upon it if, in the Bank's opinion, this could have a Material Adverse Effect;
 - e) (notwithstanding Item d above) the Obligated Entity fails to timely repay any Financial Indebtedness or any Financial Indebtedness of the Borrower becomes or is held to be or might be declared to be due and payable before its maturity date or the repayment thereof is or may be declared to be due and payable as a result of any event of default (notwithstanding the actual name thereof) or any other circumstances;
 - f) any representation or warranty made by the Obligated Entity in a Finance Document or in any request, notice, certificate or other document submitted in connection with a Finance Document proves to have been untrue or misleading when submitted or repeated;
 - g) the Facility is utilised by the Borrower in a manner inconsistent with the provisions of the Agreement;
 - h) the Borrower materially, in the Bank's opinion, changes its core activities that appear in documents presented to the Bank for the purposes of creditworthiness evaluation;
 - i) an event takes place which, in the Bank's opinion, could have a Material Adverse Effect;
 - j) a merger, division or transformation of the Borrower takes place or the ownership structure of the Borrower undergoes changes which, in the Bank's opinion, could have a Material Adverse Effect;
 - k) any Finance Document is held to be invalid, ineffective or inconsistent with the applicable law or the Obligated Entity ignores the submitted declaration of will;
 - l) the situation where the Obligated Entity (i) is not able to repay or confirms its inability to repay its indebtedness as it becomes due, suspends or announces its intent to suspend the repayment of it (or for the purpose of any applicable provision of law, it is held to have suspended) or in the Bank's opinion, the economic position of the Obligated Entity indicates that such a situation may shortly occur, (ii) due to the existing or anticipated financial distress initiates official negotiations with one or more creditors with an aim to generally amend the repayment schedule or restructuring or to adjust the debt; (iii) makes a general assignment to creditors, or enters into a composition with its creditors, or a moratorium is announced with respect to any debt of the Obligated Entity; (iv) the value of assets held by the Obligated Entity is lower than the value of its liabilities; (v) in the Bank's opinion, there are some legal premises for declaring the Obligated Entity bankrupt under the Bankruptcy Law or opening the restructuring proceedings provided for in the Restructuring Law or in Article 75c of the Banking Law with the respect to its debts, or (vi) a resolution scheme (*postępowanie naprawcze*) (or proceedings of a similar type) is initiated with respect to the Obligated Entity;
 - m) bankruptcy is declared or a restructuring (*restrukturyzacja*) is opened with respect to the Obligated Entity, or (i) members of the Management Board or shareholders of the Obligated Entity file a motion for the Obligated Entity to be declared bankrupt or for a restructuring (*restrukturyzacja*) to be opened, or (ii) the same motion is filed by any person other than a member of the Management Board or a shareholder of the Obligated Entity and such a motion is not dismissed or rejected within 30 (thirty) days following the filing thereof;
 - n) assets are seized in a court or administrative enforcement proceeding, or any enforcement or other legal process takes place with respect to any assets of the Obligated Entity in connection with any debt of the Obligated Entity, also including the items on which the Security Interest is established, unless such event is cancelled or the relevant amount is paid within 30 (thirty) days, except for the cases where the process has been duly challenged by the Obligated Entity acting in good faith;
 - o) the Obligated Entity fails to fulfil the conditions of any final judgement or award within 30 (thirty) days following the day on which such conditions should have been fulfilled, except for a situation where an appeal against such a judgement was made by the Obligated Entity acting in good faith and with due care;
 - p) any court, arbitration, administrative, enforcement or tax proceedings, a tax inspection, customs and fiscal inspection or other proceedings have been initiated against the Obligated Entity, whose unfavourable outcome for the Obligated Entity may have, in the Bank's opinion, a Material Adverse Effect;

- q) as regards the Obligated Entity, any other event occurs which, in the Bank's opinion, corresponds, in terms of its effects, to the events specified in Items (m) through (p) above.
- r) The occurrence of any other event which is defined as the Event of Default in the Agreement or any other Finance Document.

§ 16

Euro Redenomination Event

In any case where a state which is a Participating Member State as at the date of the Agreement and which is:

- a) the jurisdiction of incorporation of the Borrower;
- b) in the Bank's assessment, the jurisdiction of the centre of main interest of the Borrower; or
- c) a jurisdiction where, in the Bank's assessment, a substantial proportion of the Borrower's assets are located or their revenues are generated,

ceases to be a Participating Member State and/or otherwise takes any steps to redenominate payments in euro into another substituted national currency, the Bank has the right to:

- a) refuse to make the Facility in euro available in part or in full,
- b) demand that the Facility in euro be repaid, with a 30-day period of notice, or
- c) redenominate the Facility to PLN or any of the Utilisation Currencies at the Bank's then prevailing spot selling rate of exchange.

§ 17

Rights of the Bank in the Case of Events of Default

- 1) If the Bank omits to state or delays stating that an Event of Default has occurred, this does not constitute a waiver by the Bank of a right to state that such an Event of Default has occurred at a later time.
- 2) If any Event of Default occurs in respect of the Agreement, the Bank has the right to:
 - a) refuse to make the Facility available in part or in full,
 - b) terminate the Agreement in part or as a whole and demand that the Facility be repaid, together with accrued interest, fees, margins and other incidental receivables, with a 30-day period of notice and in the case of a threat of bankruptcy of the Borrower, with a 7-day period of notice, or
 - c) demand that an additional Security Interest satisfactory to the Bank is established;
 - d) demand the covering of any damage incurred by the Bank due to the occurrence of the Event of Default, as well as the covering of any costs and expenses related to the Bank exercising any of its rights as stipulated in the Terms and Conditions or the Agreement in connection with the occurrence of the Event of Default.
- 3) If the Agreement is terminated, the indebtedness and any other liabilities of the Borrower towards the Bank under the Agreement become immediately due upon expiry of the period of notice.

§ 18

Rights of the Bank in case of Benchmark Transition Date

- 1) On or after the occurrence of a Benchmark Transition Date, the Bank may amend the Agreement and/or the Terms and Conditions to replace Relevant Benchmark with a Benchmark Replacement. Any such amendment will become effective on the Effective Date without any further action or consent of the Borrower, provided that the Bank has not received written notice of objection to such amendment from the Borrower by 5:00 p.m. (Warsaw time) on the tenth Business Day after the Bank has provided such amendment to the Borrower.
- 2) If the Bank receives written notice of objection in accordance with paragraph 1 above, the Borrower and the Bank shall promptly enter into negotiations in good faith with a view to agreeing the amendments to this Agreement to replace Relevant Benchmark with a Benchmark Replacement no later than by the Effective Date. Any such agreed amendments will become effective on the Effective Date and if the Bank and the Borrower fail to reach an agreement, the amendments proposed by the Bank under paragraph 1 becomes effective on the Effective Date.
- 3) In connection with the implementation of a Benchmark Replacement, the Bank will have the right to make any consequential changes that the Bank determines are appropriate to reflect the adoption, implementation and administration of such Benchmark Replacement from time to time and any changes to include fallbacks in the event the Benchmark Replacement is not available. Any amendments implementing such changes will become effective after the Bank has provided such amendment to the Borrower without any further action or consent of the Borrower.
- 4) The Bank will promptly notify the Borrower upon becoming aware of any occurrence of a Benchmark Transition Date. Any determination, decision or election that may be made by the Bank pursuant to this Clause 18 will be conclusive and binding absent manifest error and may be made in the Bank's sole discretion.
- 5) The Borrower shall, at the request of the Bank, take such action as is available to it for the purpose of authorising or giving effect to the amendments effected or to be effected pursuant to this Clause 18 and, if any security or guarantee has been granted in respect of this Agreement, to ensure the perfection, protection or maintenance of any such security or guarantee.
- 6) This Clause shall apply notwithstanding any other provision of this Agreement.
- 7) In this Clause:

“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which may be a simple or compounded risk free rate or, as appropriate, a central bank rate, fixed rate or a term rate) that has been selected by the Bank giving due consideration to: (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by a relevant Governmental body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to Relevant Benchmark and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Benchmark Replacement Adjustment” means, with respect to the alternate benchmark rate for each applicable Interest Period, the spread adjustment, or method for determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Bank for the purpose of adjusting the alternate benchmark rate to make it comparable to Relevant Benchmark giving due consideration to: (i) any selection or recommendation of a spread adjustment, or method for determining such spread adjustment, for the replacement of Relevant Benchmark with the alternate benchmark rate by a relevant Governmental body (or committee convened by such body) or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, for the replacement of Relevant Benchmark with the alternate benchmark rate.

“Benchmark Transition Date” means the occurrence of one or more of the following events with respect to Relevant Benchmark:

- a. an official public statement which states that Relevant Benchmark has ceased or will cease to be published permanently or indefinitely; or
- b. a public statement by the regulatory supervisor for the administrator of Relevant Benchmark announcing that Relevant Benchmark is no longer representative; or
- c. in relation to LIBOR the earlier to occur of the events referred to in point a-b above or 30th September 2021.

“Effective Date” means the Business Day notified by the Bank to the Borrower as the date at which the amendments to be effected pursuant to this Clause become effective.

“Relevant Benchmark” – means any reference rate which is used by the Bank in accordance with the Agreement to determine the interest.

FINAL PROVISIONS

§ 19

Notices

- 1) Notices given between the Bank and the Borrower arising from or related to the Terms and Conditions, Agreement may be provided by letter or via electronic information media.
- 2) A notice given pursuant to Section 1 above but received on a day other than a Business Day or after the opening hours of the Bank shall be deemed to be delivered on the next Business Day.
- 3) Notices shall be sent to the addresses of the parties indicated in the Agreement or Bank Account Agreement or to another address indicated by the party at a notice of no less than 7 (seven) Business Days.
- 4) The Borrower undertakes to notify the Bank promptly of each change of its name, registered office and address. Subject to the provisions of § 19 Section 3, in the case of a breach of the obligation to indicate the current address of the Borrower, correspondence sent to the last indicated address shall be deemed to be delivered effectively as at the date of the first post advice note or the receipt by the Bank of the letter returned due to the impossibility to deliver it.
- 5) Any notices arising from or related to the Terms and Conditions or Agreement shall be deemed to be delivered effectively:
 - a) if delivered by a courier - on the delivery date;
 - b) if sent by fax or via electronic information media - on the day on which the sender receives a confirmation of correct transmission;
 - c) if sent by registered letter or letter with return receipt requested – on the day on which the letter is delivered or notified of.

§ 20

Miscellaneous

- 1) Unless the Agreement provides otherwise, the provisions of Art. 75a Section 2 of the Banking Law shall not apply to the Facilities granted pursuant to the Agreement.
- 2) In case of establishing a collateral in the meaning of art. 5 Section 1 point 1of the Act on Certain Financial Collateral for the benefit of the Bank pursuant to these Terms and Conditions or any other Financial Document, the Bank shall be entitled to net (set off) all its matured claims under the Credit and in case of the Event of Default even if such claims are not matured yet with the monies transferred to the Bank as the said collateral. Unless relevant Financial Document provides otherwise, such collateral is established for a period of 50 years from the Maturity Date.
- 3) The Borrower may not assign any rights or transfer any obligations arising from the Agreement without the prior written consent of the Bank. The Bank may assign its rights and transfer its obligations under the Agreement.

- 4) Subject to the mandatory provisions of the Banking Law, the Bank may disclose to entities being members of HSBC Group such information about the Borrower as the Bank shall consider appropriate and by signing the, the Borrower agrees to the release of the same.
- 5) Any calculation or determination by the Bank for the purposes of the Agreement as well as the bank statements drawn up for the Account shall, in the absence of manifest errors, be conclusive and binding and may be brought forward as evidence in court proceedings, subject to Art. 728 § 3 of the Civil Code.
- 6) Some information given by the Client may constitute personal details. Subject to the provisions of § 20 Section 4 above, the Bank shall not disclose such information unless:
 - a) it is under the legal duty to disclose information or such a disclosure is in the public interest,
 - b) the Client requests the Bank to disclose information or the Client consents to the same in writing, or
 - c) the disclosure of details is in the interest of the Bank, e.g. in order to protect the Bank against loss or for the Bank to recover the loss incurred.

The Client hereby consents to the disclosure of information in the above events.

- 7) The Bank shall not be liable for any loss, damage or delay that arises in part or in full due to *force majeure*, riots, domestic disturbances, uprising, war, failure of equipment, damage, faulty operation or lack of access to a telecommunications network, data transmission network or computer systems or services, electricity cuts, strikes or protests (whether attended by the Bank's staff or not) or due to any other causes beyond any possible control of the Bank.
- 8) The Bank shall be liable to the Client solely for damage caused by wilful misconduct or gross negligence on part of the Bank. The Bank's liability shall be limited to the damage actually incurred within the scope of normal and direct consequences of the Bank's acts or omissions. If any provision of the Terms and Conditions or Agreement turns inconsistent with the law, this shall not affect the effectiveness and validity of the other provisions of the Terms and Conditions or Agreement.
- 9) The Terms and Conditions constitute an integral part of the Agreement.
- 10) The Bank may at any time amend the Terms and Conditions or the Table without terminating or amending the Agreement.
- 11) Upon informing the Borrower on the amendment of the Terms and Conditions or the Table, the Bank shall:
 - a) deliver the content of the new Terms and Conditions or the Table or amendments to those documents, as well as shall indicate the date when they come into force and inform about the possibility to place a statement mentioned in § 20 point 12 below, or
 - b) place the information on the amendments and new Terms and Conditions or the Table on www.hsbc.pl website; therefore the Borrower are obliged – at least once a week – to verify the abovementioned website.
- 12) If within 14 (fourteen) days from the date of informing the Borrower (in the manner described in § 20 section 11 above) about the amendment of the Terms and Conditions or the Table, the Borrower does not terminate the Agreement, the new Terms and Conditions or the Table or amendments to the Terms and Conditions or the Table shall be deemed to be accepted and binding after the lapse of the period indicated in the notice sent by the Bank. If a statement of non-acceptance of the new provisions of the Terms and Conditions or the Table or the new Terms and Conditions is submitted, the Agreement is terminated after the lapse of 30 (thirty) days from the submission date of such a statement.
- 13) An amendment to the Terms and Conditions shall not result in the need to amend any previously executed Agreements. In the event of any change to the existing numbers of the provisions comprising the Terms and Conditions or the replacement of specific provisions with some other provisions, any and all references to the Terms and Conditions contained in the Agreement shall be construed as references to the provisions of the Terms and Conditions so amended that their contents or function correspond to them. An amendment to the Terms and Conditions shall not change any provisions negotiated on an individual basis and contained in the Agreement.
- 14) Matters not regulated by these Terms and Conditions, Agreement shall be subject to the applicable laws of Poland and regulations binding upon banks in Poland.