

**THIS WITHOUT RECOURSE LETTER OF CREDIT DISCOUNTING DEED** is made on        day of        ,

**BY: THE PERSON OR COMPANY** whose name and address are shown in schedule 1 hereto (the “**Customer**”).

**TO: China Minsheng Banking Corp., Ltd. Hong Kong Branch** whose address is shown in schedule 2 hereto (the “**Bank**”)

## **WHEREAS**

The Customer requests the Bank from time to time to collect, negotiate and/or discount the receivables under letters of credit to be issued from time to time in its favour as beneficiary, in each case without recourse by the Bank to the Customer in the event of non-payment of such letters of credit. In this deed, “**Credit**” means any letter of credit issued in favour of the Customer in respect of which the Bank and the Customer agree that:-

(1) documents required by the Credit for making drawing (“**Credit Documents**”) from the Credit issuing bank (“**Issuing Bank**”) are to be delivered by the Customer to the Bank for presenting to the Issuing Bank either as the negotiating bank or as the collecting bank on the Customer's behalf; and

(2) the Bank is to purchase the receivables under such Credit (the “**Receivables**”) at a discount to their face value. Without prejudice to any rights in respect of such Credit or Receivables which the Bank may have as a negotiating bank, the Customer agrees to assign the Receivables of (and all its other rights under) each Credit to the Bank on the terms set out in this deed.

## **OPERATIVE PROVISIONS**

### **1. ASSIGNMENT**

In consideration of the Bank acting as negotiating and/or collecting bank in connection with any Credit and/or discounting or agreeing to discount any Receivables and/or giving time, credit, facilities or other accommodation whatsoever to the Customer, the Customer as the sole beneficial owner assigns and agrees to assign absolutely and irrevocably to the Bank all the Customer's rights, titles, interests and benefits to and in the Receivables of each Credit and all other rights and benefits whatsoever accruing now or at any time to the Customer under or in connection with each Credit. Except as provided in this deed, the Customer:-

(1) shall not be at liberty to create or permit to exist any security interest upon any Credit or its Receivables;

(2) shall procure that no lien, set-off right, deduction or other equity whatsoever shall exist on or over any Credit or the Receivables thereunder; and

(3) shall not sell, assign, dispose of or deal with the benefit of any Credit or the Receivables thereunder.

## **2. POWER OF ATTORNEY**

The Customer irrevocably appoints the Bank with full power of substitution and delegation as the Customer's attorney for the Customer and in the Customer's name or otherwise and on the Customer's behalf and as its act and deed or otherwise from time to time and at any time:-

(1) to prepare, complete, amend, endorse (in the Bank's favour or otherwise), sign, issue and/or otherwise deal with (in such manner as the Bank shall think fit) all and any invoices, bills, drafts, documents of title, insurance policies and other documents of whatever nature and do all other things considered by the Bank to be necessary or desirable in connection with the collection of the Receivables of any Credit or seeking reimbursement from the Issuing Bank for the Bank's negotiation of such Credit or purchase the receivables under such Credit;

(2) to put forward, consent to and/or reject any proposal for amendment of any Credit;

(3) to waive and/or request waiver of compliance by any person with any requirement of any Credit, including (without limitation) to accept and/or tender discrepant documents and to give any indemnity or undertake any other obligation to the Issuing Bank or other person in connection therewith;

(4) to sign, seal, execute, deliver, perfect and/or do all deeds, instruments, acts and things which the Bank may consider necessary or desirable for carrying out any obligation of the Customer to the Bank or for perfecting this deed as a valid legal assignment of the Receivables of any Credit or for giving to the Bank the full benefit of this deed; and

(5) to institute, continue and/or defend any proceedings anywhere in the world in connection with any Credit or its Receivables. This power of attorney is given by way of security for the performance by the Customer of this deed and shall be irrevocable (despite the Customer's death, bankruptcy, liquidation or other incapacity whatsoever) so long as the Customer has any liability to the Bank in respect of any Credit and the Receivables of any Credit and the Customer shall from time to time and at all times hereafter ratify and confirm whatsoever the Bank shall lawfully do or cause to be done by virtue of such power.

## **3. UNDERTAKINGS CONCERNING CREDIT**

The Customer irrevocably undertakes to the Bank that:-

(1) without prejudice to clause 2, the Customer shall sign, complete and/or deliver to the Bank such invoices, bills, drafts and other documents and do and execute such acts, instruments and things as the Bank shall require whether to enable the Bank to obtain the Receivables of any Credit or otherwise in connection with this deed;

(2) the Customer shall not agree to or make any modification or amendment to any Credit without the Bank's prior written approval (which approval may be withheld by the Bank at its entire discretion and without giving any reason therefor);

(3) the Customer shall arrange for each Credit and every amendment to it to be delivered to the Bank for its retention promptly upon the Customer receiving the same;

(4) the Customer shall indemnify the Bank in respect of all losses, costs, actions, claims, expenses, demands and liabilities whether in contract, tort or otherwise and whether arising at common law, in equity or by statute which may be incurred by or made against the Bank at any time relating to or arising directly or indirectly out of or as a consequence of anything done or omitted in the exercise or purported exercise of the powers contained in this deed; and any breach by the Customer of any obligations, representations and warranties under this deed;

(5) the Customer shall pay to the Bank or otherwise as the Bank may direct, all monies which the Customer may have received, or credited for, in respect of the Credit or the Receivables of the Credit or any underlying or ancillary claims; and

(6) the Customer shall not do or cause or permit to be done anything which may in any way depreciate, jeopardize or otherwise prejudice the amount or value of the Credit or the Receivables of the Credit.

#### **4. REPRESENTATION AND WARRANTIES**

The Customer represents and warrants to the Bank that:-

(1) upon and following presentation of the Credit Documents in respect of each Credit, the obligation of the Issuing Bank to make payment of the Receivables of such Credit will be a legal, valid and binding obligation of, and, enforceable against, the Issuing Bank in accordance with its terms;

(2) the Customer has not entered into any arrangement (whether written or oral) or granted in favour of any person any interest in or any right or option whatsoever in respect of the Credit or the Receivables (except created under this deed);

(3) upon and at all times following issuance of each Credit (a) the Receivables of such Credit will be validly assignable and will have been validly assigned in the manner provided in this deed, (b) the Customer will have full right and title to such Credit and its Receivables and it will not create or permit to subsist any mortgage, charge, pledge, lien, claim or other encumbrance affecting such Credit or its Receivables in favour of any person, (c) there will be no claims, defences, counterclaims or set-offs asserted by the Issuing Bank and/or the applicant for such Credit (or any person related to such applicant) against the Customer and (d) the Customer will not release the Issuing Bank and/or the applicant or other related person mentioned above from any liability in connection with the Credit;

(4) the Customer possesses and will at all relevant times possess the necessary powers and authority to execute, deliver, enter into and comply with the terms of this deed and to perform the transactions envisaged by this deed;

(5) no rule, regulation, law or other legal limitation in any way now restricts or prevents or will at any time restrict or prevent the Customer from entering into or complying with this deed or performing the transactions envisaged by this deed; and

(6) all necessary corporate, shareholder or other authorizing action has been taken by the Customer to enable and authorise it to enter into, deliver and perform this deed.

The representations and warranties mentioned above are deemed to be made by the Customer by reference to the facts and circumstances then existing on each day that the Receivables or any part of the Receivables remains owing.

## **5. PROTECTIONS**

The Bank may take and/or require the Customer to take such action as the Bank thinks fit to perfect the rights, interests and benefits granted to the Bank hereunder, whether by the giving of notice of this deed (in such form as the Bank shall reasonably require) to any Issuing Bank or other person or by any other means whatsoever. The Bank's rights herein are in addition to any other rights present or future held by it against the Customer or any other person and nothing contained herein shall adversely affect any other rights that the Bank may have from or against the Customer or any other person.

Each of the provisions of this deed shall be severable and distinct from one another. The illegality, invalidity or unenforceability of any provision of this deed under any law shall not affect its legality, validity or enforceability under any other law nor the legality, validity or enforceability of any other provision of this deed.

No failure or delay in exercising on the Bank's part any right hereunder shall operate as a waiver thereof, no single or partial or defective exercise of any right shall preclude any further exercise thereof or the exercise of any other right and no waiver by the Bank shall be effective unless it is in writing.

The rights provided in this deed are cumulative and may be exercised as often as the Bank considers appropriate and are not exclusive of any other rights provided by law.

This deed is subject to the General Agreement by Customer(s) and other agreement(s) previously signed and delivered by the Customer to the Bank, if any. In case of conflict, terms of this deed shall prevail to the extent of the conflict.

## **6. PARTIES AND COMMUNICATIONS**

If the Customer comprises more than one person, then the obligations of each of such persons shall be joint and several. Each such person agrees to be bound by this deed notwithstanding that any others who were intended to sign or to be bound by this deed may not do so or be effectually bound hereby and notwithstanding that this deed may be invalid or unenforceable against any one or more of such persons whether or not the deficiency is known to the Bank. The Bank shall be at liberty to release, compound with or otherwise vary or agree to vary the liability of, or to grant time or indulgence to, or make other arrangements with, any one or more of such persons without prejudicing or affecting its rights, liabilities and remedies against any such other persons.

This deed shall bind and enure to the benefit of the Bank's and the Customer's respective legal representatives or successors and assigns, provided that the Customer may not assign or transfer all or any of its rights and obligations hereunder without the Bank's prior written consent.

Any communication to be made under or in connection with this deed shall be made in writing and may be made by fax or letter unless otherwise stated. Each notice or other communication by the Bank to the Customer may be given by addressing the same to the Customer's address stated in schedule 1 of this deed or such other address in Hong Kong as the Customer may inform the Bank of for this purpose or sending the same to the Customer's fax number stated in schedule 1 of this deed or to such other fax number as the Customer may inform the Bank for this purpose and any such notice or other communication shall be deemed given (1) when the Bank's machine records a complete transmission (if given by fax) or (2) when left at the address mentioned above (if so delivered) or (3) two (2) days after posting addressed as required above (if posted). Any communication or document to be made or delivered to the Bank will be effective only when actually received by the Bank and only if it is expressly marked for the attention of the department or officer as the Bank shall specify for this purpose in schedule 2 of this deed.

## **7. MISCELLANEOUS**

- (1) A Clause or Schedule is a reference to a clause of or schedule to this deed.
- (2) A person includes an individual, a company, a partnership or body unincorporated and its successors and assigns.
- (3) Unless the context otherwise requires, words importing the singular include the plural and vice versa and the neuter gender includes the other genders.
- (4) A document is a reference to that document as amended, restated, reissued or supplemented.
- (5) If this deed is executed by more than one person as Customer, the liabilities and obligations of each of the persons are primary as well as joint and several and none of the persons shall be released from any liability hereunder by reason of this deed being amended or varied or ceasing to be binding as a continuing obligation (for whatever reason) on any of the persons.
- (6) Where the Customer consists of partners reference to the Customer, where the context admits, are references to the persons who constitute the Customer for the time being.
- (7) The headings in this deed are for convenience only and are to be ignored in construing this deed.

## **8. LAW AND JURISDICTION**

This deed shall be subject to, and construed in accordance with, the laws of Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong"), the Customer submits to the non-exclusive jurisdiction of the Hong Kong courts in connection with the legal relationships established by this deed (including, without limitation, claims for set-off or counterclaim) or otherwise arising in connection with this deed. The Customer irrevocably agrees that the address in Hong Kong shown in schedule 1 (or such other address in Hong Kong as the Customer may designate by at least 10 days' prior written notice to the Bank) shall be an effective address for service of proceedings on the Customer in connection with this deed.

The Customer irrevocably waives any objections on the ground of venue or forum non conveniens or any similar grounds and the Customer irrevocably consents to service of process by mail or in any other manner permitted by the relevant law.

## **SCHEDULE 1**

### **(Customer Details)**

Name: .....

Contact address: .....

Telephone no.: ..... Fax no.: .....

Hong Kong address: \* ..... Hong Kong

\*Hong Kong address to be specified here for service of proceedings on Customer if the contact address shown above is not in Hong Kong.

## **SCHEDULE 2**

### **(Bank Details)**

Contact address : .....

Telephone no.: ..... Fax no.: .....

Attention: .....

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

**Customer**

*(For use by individual, sole proprietor and partnership customer)*

Signed sealed and delivered by the Customer

(1) \_\_\_\_\_ (L.S.) (2) \_\_\_\_\_ (L.S.)

(3) \_\_\_\_\_ (L.S.) (4) \_\_\_\_\_ (L.S.)

Print name (s) of signatory(ies):

(1) \_\_\_\_\_ (2) \_\_\_\_\_

(3) \_\_\_\_\_ (4) \_\_\_\_\_

**Witness**

Witness's signature: \_\_\_\_\_

Print Witness's Name: \_\_\_\_\_

*(For use by corporate customer)*

*Executed as a deed by the Customer:*

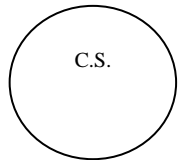
Company Name: \_\_\_\_\_

Signature : \_\_\_\_\_

Name of signatory: \_\_\_\_\_

Signature : \_\_\_\_\_

Name of signatory: \_\_\_\_\_



S.V.	FOR BANK USE
	APPROVED BY

**Witness**

Witness' Signature : \_\_\_\_\_

Print Witness' Name: \_\_\_\_\_

Note: A certified copy of the resolutions of the board of directors of the Customer (if it is a company) should be supplied.