



MERCHANT TERMS

These are the **Merchant Terms** the "**Merchant Terms**") referred to and to be read in conjunction with the Facility Letter the terms and conditions of which are applicable to each Facility between GFSS and a Borrower.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions:

Terms defined in the Facility Letter (and not otherwise defined herein) will have the same meaning when used in these Merchant Terms:

"Affiliate" means, in relation to a person:

- (a) its Subsidiary;
- (b) Holding Company; or
- (c) any other Subsidiary of that Holding Company.

"Agreement" means the Facility Letter, all schedules and appendices thereto and these Merchant Terms.

"Approved Securities" means the securities as advised by the Borrower and approved by from time to time.

"Authority" means any government, quasi-government, administrative, regulatory or supervisory body or authority, court or tribunal.

"Banking Day" means a day (other than a Saturday or Sunday) on which banks are generally open for business.

"Borrowers" means the Borrower as defined in the Facility Letter.

"Conditions Precedent" means those conditions precedent set out in the Facility Letter.

"Control" and **"Controlled"** means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to direct its management and policies or to control the composition of its board of directors or equivalent body; or
- (b) ownership of more than 50% of the voting share capital or equivalent right of ownership of that person.

"Default Rate" means 2% per annum over such rate(s) as would have ordinarily been applied by GFSS.

"Facility" means the facility described in the Facility Letter.

"Facility Letter " means the Facility Letter between the Borrower and GFSS

"Finance Document" means the Agreement, any Security Document, any document identified as such in the Agreement, or any other document designated as such by GFSS from time to time, and all schedules and appendices thereto.

"Financial Indebtedness" means any indebtedness incurred for or in respect of:

- (a) monies borrowed;
- (b) any amount raised under any other transaction (however structured) having the commercial effect of a borrowing; and
- (c) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) and (b) above.

"Financial Statements" means:

- (a) for the Borrower, the audited consolidated financial statements of the Group for each of its financial years; and
- (b) for each Obligor other than the Borrower, its audited financial statements for each of its financial years.

"Group" means the group of companies, the members of which are Controlled by (a) the same company which Controls the Borrower, or (b) where no company Controls the Borrower, the Borrower.

"Holding Company" means, in relation to a person, any other person in respect of which the first named person is a Subsidiary.

"Market Disruption Event" means:

- (a) at or about noon on the Quotation Day the Screen Rate is not available or is zero or negative, or reasonable and adequate means do not exist for ascertaining the relevant interbank offered rate (as the case may be);
- (b) matching deposits are not readily available in the relevant interbank market; or
- (c) before close of business in the principal city of the relevant interbank market on the Quotation Day, the cost to GFSS of obtaining matching deposits in the relevant interbank market would be in excess of the relevant interbank offered rate (as the case may be).

"**Obligor**" means any Borrower and any person providing a guarantee of and/or Security Interest for the obligations of any Borrower and/or any other Obligor under the Finance Documents.

"**Party**" means a party to the Agreement.

"**Security Documents**" means each of the documents given or to be given by any person in favour of GFSS creating or granting any Security Interest in favour of GFSS in respect of the obligations of all or any of the Borrowers to GFSS, each in form and substance satisfactory to GFSS.

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

"**Subsidiary**" means in relation to a person, any other person:

- (a) which is Controlled, directly or indirectly, by the first named person;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first named person; or
- (c) which is a Subsidiary of another Subsidiary of the first named person.

"**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

1.2 Interpretation

- (a) Any reference in the Agreement to:
 - (i) an "**amendment**" includes a supplement, variation, novation, restatement or re-enactment and "**amended**" will be construed accordingly;
 - (ii) a "**disposal**" means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary and "**dispose**" will be construed accordingly;
 - (iii) an "**authorisation**" includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
 - (iv) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money;
 - (v) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other Authority or organisation;
 - (vi) any statute or any section of any statute will be deemed to include reference to any statutory modification or re-enactment of it for the time being in force;
 - (vii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or updated, including any increase in the amount of a facility or for an additional facility;
 - (viii) a currency is to the lawful currency for the time being of the relevant country;
 - (ix) a "**month**" is a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month. If there is no numerically corresponding day in the following month, that period will end on the last Banking Day in that calendar month; and
 - (x) a "**person**" includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality.
- (b) A reference to a Party or a person will be construed as including its and any subsequent successors in title, permitted transferees and permitted assigns, in each case in accordance with their respective interests.
- (c) A Borrower providing "**cash cover**" for a Facility means that Borrower paying an amount in the currency of that Facility to an interest-bearing account in the name of that Borrower and:
 - (i) the account is with GFSS;
 - (ii) withdrawals from the account may only be made to pay GFSS amounts due and payable to it under that Facility until no amount is or may be outstanding under that Facility; and
 - (iii) that Borrower has executed a Security Document, in form and substance satisfactory to GFSS, creating a first ranking Security Interest over that account.
- (d) If there is any inconsistency between:
 - (i) the Facility Letter and these Merchant Terms, the former will prevail.

1.3 The Facilities

- (a) **Limits:** GFSS will offer each Borrower the Facilities up to the limits as specified in the Facility Letter

- (b) **Pricing and conditions:** GFSS will offer each Facility to each Borrower in accordance with the pricing and conditions as specified in the Facility Letter.
- (c) **Utilisation:** If a Borrower wishes to utilise a Facility, that Borrower must satisfy the requirements set out in the Facility Letter as applicable to that Facility.
- (d) **Uncommitted:** Regardless of any other provision to the contrary, each Facility is uncommitted and is made available to each Borrower at GFSS's sole discretion. GFSS will have no obligation to make any utilisation under, or make available any part of, any Facility.
- (e) **On demand:** Regardless of any other provision to the contrary, each Facility is made available on an on-demand basis. GFSS may at its sole discretion at any time on written notice to any Borrower:
 - (i) cancel or call for cash cover for all or any part of any Facility; or
 - (ii) demand repayment/payment of any amount outstanding or otherwise due under or in relation to any Facility (whether principal, interest or other sum), whereupon each Borrower must immediately pay the relevant amount to GFSS.

2. CONDITIONS PRECEDENT

2.1 Initial Conditions Precedent

Each Borrower must provide all of the Conditions Precedents in form and substance satisfactory to GFSS before any utilisation of a Facility is permitted.

2.2 Further conditions precedent

GFSS's obligations in respect of each utilisation are subject to the further conditions precedent that on both the date of each utilisation request and the relevant utilisation date:

- (a) the representations and warranties made or given under the Finance Documents are true and accurate in all material respects; and
- (b) GFSS has received all of the documents and other evidence appearing to comply with any of the utilisation specific conditions precedent requested by GFSS.

3. VOLUNTARY PREPAYMENT

If voluntary prepayment is permitted in the Finance Documents, all prepayments received by GFSS will be applied in or towards repayment and satisfaction of the obligations of the Borrower under the relevant Facility in inverse chronological order.

4. DEFAULT INTEREST

- 4.1 If a Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest ("**Default Interest**") will accrue daily on the entire overdue amount from the due date up to the date of actual payment (both before and after judgment) at the Default Rate and will be immediately payable on demand to GFSS.
- 4.2 Default Interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount on any basis that GFSS may select.

5. TAXES

- 5.1 Each Borrower must make all payments to be made by it under the Finance Documents without any set-off or counterclaim and free from any deduction or withholding for or on account of any Tax.
- 5.2 If a Borrower is required by law to make any such deduction or withholding, that Borrower must:
 - (a) pay to GFSS any additional amount as may be necessary to ensure that GFSS receives the full amount of the relevant payment as if that deduction or withholding had not been made; and
 - (b) supply promptly to GFSS evidence satisfactory to GFSS that it has accounted to the relevant Authority for the withholding or deduction.

6. INCREASED COSTS

- 6.1 Each Borrower must immediately on demand by GFSS, pay the amount of any increased costs incurred by GFSS or any of its Affiliates as a result of:
 - (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (b) compliance with any law or regulation made after the date of the Agreement.

7. PAYMENTS

7.1 Place, currency and funds

- (a) Each Borrower must make each payment due under a Finance Document in clear and irrevocable funds in the currency in which such payment is denominated on the due date at the time and in such funds specified by GFSS.
- (b) Payment must be made to such account(s) as GFSS specifies.

7.2 Partial payments

If GFSS receives insufficient payment to discharge all the amounts then due and payable under the Finance Documents, GFSS may apply that payment towards the obligations under the Finance Documents in any manner GFSS decides, irrespective of any appropriation made by any Borrower.

7.3 Timing of payments

If a Finance Document does not provide for when a particular payment is due, that payment is due within three Banking Days of demand by GFSS.

8. REPRESENTATIONS AND WARRANTIES

Each Borrower makes the following representations and warranties to GFSS from and after the date of the Agreement which are deemed to be repeated at all times (having regard to the circumstances existing at the time of repetition) so long as any sums are actually or contingently owing under the Finance Documents.

8.1 Status

- (a) It is and each of the other Obligors is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It, each other Obligor and each of its Subsidiaries have the power to own its assets and carry on its business as it is being conducted.

8.2 Binding obligations

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

8.3 Non-conflict

The entry into and performance of the Finance Documents by it and each other Obligor and the transactions contemplated by the Finance Documents do not and will not conflict with:

- (a) any law or regulation or any official or judicial order applicable to it or any other Obligor; or
- (b) its or any of its Subsidiaries' or any other Obligor's constitutional documents; or
- (c) any agreement or instrument binding upon it or any other Obligor or any of its Subsidiaries or any of its or any other Obligor's or any of its Subsidiaries' assets.

8.4 Powers and authority

It and each other Obligor has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of the Finance Documents and the transactions contemplated by the Finance Documents.

8.5 No filing or stamp taxes

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other Authority in that jurisdiction or that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

8.6 Security Interests

Any Security Interest created under the Finance Documents is, subject to completion of all registrations required by law, a legal, valid, binding and enforceable first ranking fixed charge over the assets to which such Security Interest relates.

8.7 Immunity

- (a) The entry into each Finance Document (to which it is a party), and the exercise by it of its rights and performance of its obligations under each such Finance Document will constitute, private and commercial acts performed for private and commercial purposes; and
- (b) it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document.

8.8 Environmental claims

It has complied with all environmental laws which it is subject to and is not aware of any basis for any environmental claim against it which may have a material adverse effect on its business, operations, assets, financial condition or prospects or its ability to perform its obligations under the Finance Documents or the business, operations, assets, financial condition or prospects of the Group (taken as a whole).

9. GENERAL UNDERTAKINGS

9.1 Authorisations and compliance with laws

Each Borrower must obtain, maintain and comply with any authorisation required by any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.

9.2 Pari passu ranking

Each Borrower undertakes that its obligations and liabilities under each Finance Document will at all times rank (except in respect of statutory preferential debts) at least pari passu with all its present and future unsecured indebtedness.

9.3 Negative pledge

(a) No Borrower will create or permit to subsist any Security Interest over any of its assets other than under the Security Documents.

(b) No Borrower will:

- (i) sell, transfer or otherwise dispose of any of its assets on terms by which they are or may be leased to or re-acquired by it;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

("Quasi-Security" means any transaction described in paragraph (b) above)

(c) Paragraphs (a) and (b) above do not apply to:

- (i) any netting or set-off arrangement entered into by any Group member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (ii) any lien arising by operation of law and in the ordinary course of trading or retention of title arrangement in the ordinary course of trading on standard terms and conditions of any supplier;
- (iii) any Security Interest or Quasi-Security over goods and/or documents of title to goods arising in the ordinary course of letter of credit transactions in the ordinary course of trade;
- (iv) any Security Interest or Quasi-Security created by any Finance Document;
- (v) any Approved Security except to the extent that the principal amount secured by any Approved Security exceeds the relevant maximum principal amount specified against that Approved Security; and
- (vi) any Security Interest or Quasi-Security created with the prior written consent of GFSS provided that the principal amount secured is not increased at any time.

9.4 Disposals and acquisitions

No Borrower will dispose of all or any part of their assets or make any acquisition or investment except where made in the ordinary course of trading and, in relation to a disposal of assets only, of assets in exchange for other assets comparable or superior as to type and value.

9.5 Change of business

Each Borrower must procure that no substantial change or disposal is made which will have an effect on the general nature of its business or that of its Group from that carried on at the date of the Agreement.

9.6 Financial statements and other information

Each Borrower must ensure that GFSS receives:

- (a) the Financial Statements as soon as they become available;
- (b) information necessary to enable GFSS to comply with "know your customer" or similar identification procedures as GFSS may request from time to time;
- (c) details of any litigation, arbitration or other proceedings pending or threatened; and
- (d) any further information GFSS may reasonably request from time to time in writing regarding the Group.

9.7 Notification

Each Borrower must notify GFSS promptly upon becoming aware of the occurrence of the following:

(a) **Misrepresentation**

Any representation, warranty or statement made or deemed to be made by an Obligor to GFSS is or is reasonably likely to be incorrect or misleading.

(b) **Cross Default**

Any Group member defaults under any arrangement binding upon it in circumstances where such default could reasonably be expected to have a material and adverse effect on any Obligor's business, operations, financial condition or prospects or the ability of any Obligor to perform any of its obligations owed to GFSS.

(c) **Impairment**

Any Group member suffers an impairment in its business, operations, assets, financial condition or prospects which is material and of a nature which a bank creditor, making available credit facilities of a kind similar to the Facilities, would reasonably wish to receive notice of.

(d) **Change of Control**

Any Borrower ceases to be Controlled by the Borrower or (where applicable) the same company that controls the Borrower.

(e) **Material Adverse Change**

Any event or series of events occurs (including the commencement of any legal proceedings or other analogous process in any jurisdiction) which has or is reasonably likely to have a material adverse effect on (i) the financial condition, results or operations or business of an Obligor or the Group as a whole or (ii) the validity, binding effect or enforceability of any Finance Document.

10. EVIDENCE AND CALCULATIONS

10.1 **Accounts**

Accounts maintained by GFSS in connection with the Finance Documents are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

10.2 **Certificates and determinations**

Any certification or determination by GFSS of a rate or amount under the Finance Documents will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

10.3 **Calculations**

Any interest or fee accruing under the Finance Documents accrues daily and is calculated on the basis of the actual number of days elapsed and a year of 360 or 365 days or otherwise, depending on what GFSS determines is market practice.

11. INDEMNITIES

11.1 **Currency indemnity**

Each Borrower agrees to indemnify GFSS against any loss incurred by GFSS as a result of any judgment, award or order being given or made for the payment of any amount due under any Finance Document and that judgment, award or order being expressed in a currency other than that in which the payment was due.

11.2 **General indemnity**

Each Borrower must immediately on demand indemnify GFSS against any cost, loss, Tax or liability incurred by GFSS.

11.3 **Email or fax indemnity**

Each Borrower must indemnify GFSS from and against any liability for any loss or damage arising out of any delay, loss in transit, errors in translation, the coding or decoding of the communication or omissions, variations, mutilations or other errors in the transmission of the form of communication.

12. COSTS AND EXPENSES

Each Borrower must on demand pay GFSS all costs and expenses (including legal and other advisers' fees and any Tax) GFSS incurs in connection with:

- (a) the preparation, negotiation, execution or perfection of;
- (b) any amendment to, or waiver of or consent under (or any evaluation of a request for the same); or
- (c) enforcement of, or the preservation of any rights under,

any Finance Document.

13. AMENDMENTS AND WAIVERS

13.1 **Waivers and remedies cumulative**

GFSS's failure to exercise or delay in exercising any right or remedy under the Finance Documents will not operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in any Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

14. CHANGES TO THE PARTIES

14.1 **Assignments and transfers by any Borrower**

No Borrower is entitled to assign or transfer any of its rights and obligations under the Finance Documents without GFSS's prior consent.

14.2 **Assignments and transfers by GFSS**

GFSS may at any time assign or transfer any of its rights and obligations under any Finance Document to any other person or change its lending office without the prior consent of any Obligor.

15. DISCLOSURE OF INFORMATION

GFSS will keep information provided by, or relating to, any Borrower confidential except that GFSS may disclose such information:

- (a) to any of GFSS's Affiliates;
- (b) to any of GFSS's or GFSS's Affiliates' service providers or professional advisers, who is under a duty of confidentiality to the discloser to keep such information confidential;
- (c) to any actual or potential participant, sub-participant or transferee of GFSS's rights or obligations under any transaction between the parties (or any of its agents or professional advisers) and any other person in connection with a transaction or potential transaction between the parties;
- (d) to any rating agency, insurer or insurance broker, or direct or indirect provider of credit protection; or
- (e) as required by any law or any Authority.

16. SET-OFF

GFSS may set off any obligation due from a Borrower under the Finance Documents against any obligation owed by GFSS to that Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, GFSS may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. For the purposes of this clause, "**obligation**" includes any obligation whether matured or unmatured, actual or contingent, present or future. If the amount of any such obligation is unascertained, GFSS may estimate the amount for the purposes of the set-off.

17. NOTICE

17.1 **In writing**

Any communication made in connection with the Finance Documents, including any demand made under the Agreement, must be in English and in writing and may be made by email, fax or letter.

17.2 **Contact details**

The contact details of the Borrower are as set out in the Facility Letter or as otherwise notified to GFSS by not less than five Banking Days' notice.

The contact details of GFSS are as set out in the Facility Letter or as otherwise notified from time to time to the Borrower.

17.3 **Effectiveness**

- (a) Any communication or document made or delivered to the Borrower or any other Obligor in connection with the Finance Documents will be deemed to be effective:
 - (i) if by way of fax, at the time shown on the transmission report as being successfully sent;
 - (ii) if delivered personally, at the time of delivery;
 - (iii) if sent by post, three (3) Banking Days after posting; and
 - (iv) if sent by email, at the time sent by GFSS.

- (b) Any communication or document given to GFSS will be effective only when actually received by GFSS.
- (c) Any communication or document given under paragraph (a) above but received on a non-Banking Day or after business hours in the place of receipt, will only be deemed to be given on the next Banking Day in that place.

18. PARTIAL INVALIDITY

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

19. ENTIRE AGREEMENT

The Finance Documents constitute the entire agreement between the Parties about its subject matter and replaces all previous agreements between the Parties on that subject matter. None of the Borrowers have relied on any oral or written representation or warranty made, or purportedly made, by or on GFSS's behalf.

20. RIGHTS OF THIRD PARTIES

Unless stated otherwise in a Finance Document:

- (a) a person not a party has no right to enjoy or enforce any benefit under it; and
- (b) the consent of any person not a party is not required to amend the relevant Finance Document.

21. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of that Finance Document.

22. GOVERNING LAW AND JURISDICTION

The Agreement and all non-contractual obligations arising in any way out of or in connection with the Agreement are governed by the laws of Singapore. Each Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of Singapore.