

Effective 01 March 2021

1 Smart Trade

1.1 These terms and conditions govern the use of Smart Trade, an optional module of FastNet Business, and form part of the FastNet Business terms and conditions. By registering for and using Smart Trade, you agree to be bound by these terms and conditions. Smart Trade is a Trade Finance service which allows you to appoint Smart Trade authorised persons to access information about and apply for certain Trade Finance products and services.

Smart Trade may be accessed through FastNet Business via our website asb.co.nz.

1.2 These terms and conditions consist of:

- (a) this document;
- (b) the Smart Trade registration form; and
- (c) any other document or form relating to the use of Smart Trade.

1.3 Smart Trade is structured so that there are different levels of Smart Trade authorised persons who are authorised to act on your behalf. These are:

- (a) **Smart Trade authorised signatories:** Smart Trade signatories are appointed and authorised by you when you register for Smart Trade to:
 - i. sign any form, declaration or other documentation and give instructions to us in respect of Smart Trade, a request or Trade Finance product; and
 - ii. appoint Smart Trade administrators, Smart Trade approvers, Smart Trade initiators and Smart Trade viewers, give them access to Smart Trade and remove or replace them from time to time;
- (b) **Smart Trade administrators:** Smart Trade administrators are appointed by your Smart Trade authorised signatories. You must have at least one Smart Trade administrator. Smart Trade administrators have complete access to Smart Trade and are authorised to:
 - i. use all functions of Smart Trade available to you, and approve requests in Smart Trade in accordance with your approval requirements;
 - ii. appoint and remove Smart Trade approvers, Smart Trade initiators and Smart Trade viewers; and
 - iii. set limits on the ability of Smart Trade approvers to approve requests;
- (c) **Smart Trade viewers:** Smart Trade viewers are authorised to view requests and reports prepared through Smart Trade and can view information about Trade Finance products provided to you;
- (d) **Smart Trade initiators:** Smart Trade initiators are Smart Trade viewers that can also prepare and submit requests for approval in Smart Trade; and
- (e) **Smart Trade approvers:** Smart Trade approvers are Smart Trade initiators that can also approve requests in Smart Trade in accordance with your approval requirements and any limits set by your Smart Trade administrators.

Your Smart Trade authorised persons and your approval requirements for Smart Trade are specific to Smart Trade. FastNet Business, including other optional modules, have separate authorisation requirements, roles and limits.

1.4 A User ID and password for FastNet Business are required to access Smart Trade. All Smart Trade authorised persons will:

- (a) be "Users" for the purposes of FastNet Business and have the access to FastNet Business that a FastNet Business User has;
 - (b) be issued with a User ID (if they don't already have one) to access FastNet Business; and
 - (c) if they are a Smart Trade administrator or Smart Trade approver, be required to also be an "administrator" or "approver" for the purposes of FastNet Business.
- 1.5 All Smart Trade authorised persons are "authorised persons" for the purposes of sections 2, 3, 7, 8, 9, 11 and 12 of the FastNet Business terms and conditions.
- 1.6 You are responsible for:
- (a) ensuring that all Smart Trade authorised persons are aware of and comply with these terms and conditions and the FastNet Business terms and conditions; and
 - (b) all acts and omissions of all Smart Trade authorised persons, including limiting the use of and access to FastNet Business and Smart Trade to such persons.

2 Requests

- 2.1 By making a request:
- (a) You agree that any terms specified in the request and any applicable standard terms and conditions apply. Where the request relates to an existing Trade Finance product, the request will also be subject to the terms and conditions of that Trade Finance product.
 - (b) You declare that the details in the request are complete and accurate.
 - (c) You agree to the rates and fees applicable to the request and the Trade Finance product.
- 2.2 We are under no obligation to agree to any request. Additional documentation, information or terms and conditions may be required before we agree to a request.

3 Fees and charges

- 3.1 Rates, fees and charges that apply to requests and Trade Finance products are available on asb.co.nz, on request from our branch or from your Relationship Manager.
- 3.2 We may deduct fees and charges from your nominated bank account. Our other terms and conditions may also provide us separate rights to deduct fees, charges and other amounts owing to us from your accounts.

4 Definitions

"FastNet Business" means ASB's FastNet Business internet banking platform.

"Request" means any application through Smart Trade for:

- (a) a Trade Finance Product;
- (b) a collection; or
- (c) an amendment, assignment or transfer of a Trade Finance Product.

"Smart Trade authorised persons" means each Smart Trade authorised signatory, Smart Trade administrator, Smart Trade approver, Smart Trade initiator and Smart Trade viewer.

"Standard Terms and Conditions" means the terms and conditions set out in the schedules to this agreement.

"Trade Finance Product" means a documentary letter of credit, standby letter of credit, documentary collection, letter of guarantee or an air waybill / bill of lading endorsement.

Schedule 1

Documentary Letter of Credit

Where you submit a request for, and the bank issues, a Letter of Credit ("**Credit**", "**LC**"), you undertake and agree:

1. that all goods or produce described in the request (the "**Goods**") and all documents of title, insurance policies or other documents representing or relating to the goods (the "**Documents**") at the time of the request or at any time thereafter delivered to or deposited with the bank or its agents or nominees (the Goods and the Documents together known as the "**Merchandise**") have been or will be so delivered or deposited by way of pledge as security for the payment on demand to the bank of all sums of money which now or at any time may become due or owing or may be accruing or becoming due to the bank by you together with, in all cases, interest and all other banking charges and all legal charges and costs (on a full indemnity basis) incurred in relation to this security or the enforcement thereof (the "**Secured Indebtedness**") and so that interest shall be computed (after as well as before any demand or judgment) according to the usual mode of the bank in dealing with current accounts.
2. that the bank or its correspondents shall not be responsible for the loss, genuineness, correctness or validity of the drafts, or of any of the documents received nor in respect of any misrepresentation or breach of condition or warranty by any person as to the description, quantity, quality, condition or value of any goods the subject of any LC, nor for any detention or loss of the Goods or any part thereof or any damage thereto, not for the shipper's charges on any such goods, nor for any variations in the instructions agreed to by the bank or its correspondents or any negotiating bank necessitated by the law and/or commercial practice of the country in which any draft is negotiated or presented for acceptance or for payment.
3. to pay to the bank in cleared funds, on demand, such amounts, in such currencies and at such offices as the bank may require, any payments (made or to be made) by the bank under or in connection with any LC or any drafts drawn with respect to any LC and all commissions, charges, interest on overdue payments and expenses (incurred or to be incurred) under or in connection with any LC. You authorise the bank, without prior notice, to debit at any time any of your account(s) with any such amount or amounts.
4. that the bank may, at its discretion and at your expense, request any bank negotiating under any LC issued by the bank to notify the bank by telecommunication or other expeditious means of the amount negotiated.
5. that at any time and from time to time on demand, to deliver, convey, transfer or assign to the bank additional security of a value and character satisfactory to the bank or to make such payment as the bank may require as further security for the payment of the secured indebtedness.
6. that, in respect of any LC not opened in local currency, funds will be provided either in the currency of the LC or in local currency in which latter case the bank may convert the foreign currency at the bank's selling rate for that currency on the day the funds are due to be provided or at a rate pre-arranged between the bank and you by way of forward exchange contract. You further agree to comply with all applicable governmental exchange regulations and will pay the bank on demand such amount as the bank may be required to expend on account of such regulations.
7. should any LC be issued on the basis of "Insurance Buyer's Care", to insure the Goods against all insurable risks (including fire, loss or capture at sea) in a manner and with insurers acceptable to the bank, and if requested by the bank, to hand over the policy and all receipts for current premiums to the bank or its agent. In the event of the insurance tendered by you in terms of the foregoing or tendered to the negotiating bank in terms of the LC not being arranged to the satisfaction of the bank or its agent, it or they are at liberty to effect further or other insurance including war risk and to charge you for the same.
8. that without prejudice to any of the rights or remedies of the bank in the event of you making default in compliance with any of these terms, the bank is authorised without notice to you and at your cost and expense and without being responsible for any loss occasioned thereby to collect all insurance monies, cause the Goods or any part thereof to be landed, stored, insured and/or sold or otherwise disposed of at the bank's discretion or to sell the same or any portion thereof without landing, by public auction or private contract or otherwise or assign, transfer or negotiate any of the documents for such price or consideration and upon and subject to such terms and conditions as the bank shall consider expedient, and shall apply the net proceeds in or towards the discharge of the costs incurred therein and of the secured indebtedness and the residue (if any) shall be paid to the order of the person legally entitled thereto. You further undertake to pay to the bank on demand the amount of any deficiency between such net proceeds and the aggregate of the costs incurred therein (including all usual commissions, charges and expenses of or incidental to the landing, storing or insuring of the Goods or any part thereof) and the secured indebtedness. Without prejudice to the foregoing, if such default as aforesaid is made good subsequent to the initiation of steps taken for sale or disposal we agree to pay all charges and expenses of or incidental to the taking of such steps.
9. to sign, execute and deliver any transfers, deeds or documents which the bank may require for perfecting the bank's interest in the merchandise and/or for vesting the same in or delivering the same to the bank or to any purchaser(s) from the bank and/or enable the bank or its assigns to collect any moneys payable under any policies of insurance taken out in connection with the merchandise.
10. to accept sole responsibility for the shipment under any LC of any goods the importation of which may be prohibited or restricted in any way by law, treaty or directive from import into the country of destination and indemnify the bank against any costs or other liabilities that may arise in connection therewith.
11. to pay all charges levied by the bank or its correspondents or the negotiating bank in respect of any LC.
12. that in the event of the bank releasing to you the documents (in full or in part) prior to the payment in full of the secured indebtedness, to enable you to obtain delivery of the Goods, you undertake to hold the documents, the Goods represented thereby, and the proceeds of sale of such Goods, respectively, in trust for the bank, and upon the sale of the said Goods you further undertake to pay to the bank the proceeds of sale, without any deduction, immediately on receipt and/or to give the bank if so required full authority to receive from any purchaser(s) the purchase money for the time being remaining unpaid. You shall have no claim, lien or set-off of any kind in respect thereof and the Goods comprised in the said documents shall remain the property of the bank until sold. You will keep the same duly insured against all insurable risks in the name of the bank and agree, without expense to the bank, to give the bank such further assurance as the bank in its discretion may require.

13. that the bank may make alterations to your requested wording of or other such information contained in the LC, including altering the requested advising and/or negotiating bank, if, in the bank's opinion, such alteration will clarify, correct or otherwise improve the wording of or other information contained in any LC.
14. that the bank has the sole right to direct any LC to its correspondent. You acknowledge that the bank shall not be liable for the acts, omissions or default (whether negligent or otherwise) of any correspondent bank or agent that may be used in this regard.
15. that you and the guarantor (if applicable) acknowledge that all or any security held by the bank at the time the LC is issued or any time thereafter on our behalf or on behalf of the guarantor (if applicable) may be held as security and relied upon for all current and contingent liabilities to the bank in connection with the LC.
16. that the LC shall be issued subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), Publication No. 600 of the International Chamber of Commerce, Paris, France in so far as it is applicable.

Schedule 2

Standby Letter of Credit

Where you submit a request for, and the bank issues, a Standby Letter of Credit ("**SLC**"), you undertake and agree:

1. to indemnify the bank from and against all actions, proceedings, damages, costs, claims, demands, expenses or losses which the bank may suffer incur or sustain by reason of or on account of having issued the SLC (the "**Indemnity**");
2. that the bank shall be entitled to debit your account or accounts at any of the bank's branches with the amount of any payment the bank may make under or in respect of the SLC or in respect of any payments, losses, costs and expenses suffered or incurred by the bank in consequence thereof or arising out of the Indemnity;
3. to provide funds on demand to meet all such payments, losses, costs and expenses together with interest on such amount calculated at the rate which is two (2) per cent per annum in excess of the cost to the bank of funding such amount during the period from the date of payment of such amount by the bank to the date of reimbursement to the bank of such amount;
4. that any request made upon the bank by the beneficiary for payment of any sum of money shall be sufficient authority to the bank for making such payment and it shall not be incumbent upon the bank to enquire whether the amount of any such payment is in fact due or whether or not any dispute exists between you and the beneficiary and you further agree that any payment which the bank makes in accordance or purporting to be in accordance with the SLC shall be binding upon you and shall be accepted by you as conclusive evidence that the bank was liable to make such payment or comply with such demands;
5. that your obligations under these terms shall not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate you from the obligations;
6. that as security for the issuance of the SLC you agree at any time and from time to time on demand, to deliver, convey, transfer or assign to the bank security of a value and character satisfactory to the bank or to make such payment as the bank may require. You further agree that all or any security held by the bank at the time the LC is issued or any

time thereafter on your behalf may be held as security and relied upon for all current and contingent liabilities to the bank under the SLC;

7. that all payments made shall be free and clear of and without deduction of any taxes of any nature. Should any such payment be subject to any such tax, you shall pay to the bank such additional amount as may be necessary to enable the bank to receive a net amount equal to the full amount payable. (The term "taxes" includes all levies, imposts, duties, charges, fees, deductions, withholdings, turnover tax, stamp tax and any obligations or conditions resulting in a charge). Should any payment (or other sum applied by the bank in or towards satisfaction of our obligations under these terms) not be in local currency, funds will be provided either in the currency of such payment or in local currency. In the latter case the bank may convert the foreign currency at the bank's selling rate for that currency on the day the payment is due to be made or at a rate prearranged between you and the bank by way of forward exchange contract. In any event, the rate of exchange applied in such purchase shall be binding on you. You further agree that you will comply with all governmental exchange regulations applicable to the SLC and will pay the bank on demand such amount as the bank may be required to expend on account of such regulations;
8. that the Indemnity shall be in addition to any other indemnity, guarantee or other rights the bank may at any time hold and prior to calling upon you the bank shall not be required to pursue or utilise or exhaust any other right, remedy or security which the bank may have;
9. to procure the return to the bank for cancellation of the SLC as soon as possible and to pay to the bank in local currency a fee, as separately agreed between you and the bank, payable quarterly in advance on the maximum outstanding amount payable under the SLC effective from the date the SLC is issued. Such fee shall accrue from day to day on the basis of the actual number of days elapsed and a 365 day year;
10. that the Indemnity shall continue in full force and effect until the SLC is returned to the bank duly cancelled or the bank is otherwise released from all liabilities under the SLC;
11. that any legal action or proceedings with respect to the Indemnity and these terms against you may be brought in the Courts of New Zealand and you accept, for yourselves and in respect of your assets generally and unconditionally the non-exclusive jurisdiction of the aforesaid Courts and appoint the person specified as your agent in the request as your agent for service in respect of such proceedings;
12. that the bank may make alterations to the requested wording of the SLC, if in the bank's opinion, such alterations will clarify, correct or otherwise improve the wording of the SLC;
13. that the SLC shall be issued subject to the International Standby Practices (1998), Publication No. 590 of the International Chamber of Commerce in so far as they are applicable; and
14. these terms shall be governed by and construed in accordance with the laws of New Zealand.

Schedule 3

Letter of Guarantee and Counter Indemnity

Where you submit a request for, and the bank issues, a Letter of Guarantee ("**LG**"), you undertake and agree:

1. to indemnify the bank from and against all actions, proceedings, damages, costs, claims, demands, expenses or losses which the bank may suffer incur or sustain by reason of or on account of having issued the LG (the "**Indemnity**");

2. that the bank shall be entitled to debit your account or accounts at any of the bank's branches with the amount of any payment the bank may make under or in respect of the LG or in respect of any payments, losses, costs and expenses suffered or incurred by the bank in consequence thereof or arising out of the Indemnity;
3. to provide funds on demand to meet all such payments, losses, costs and expenses together with interest on such amount calculated at the rate which is two (2) per cent. per annum in excess of the cost to the bank of funding such amount during the period from the date of payment of such amount by the bank to the date of reimbursement to the bank of such amount;
4. that any request made upon the bank by the beneficiary for payment of any sum of money shall be sufficient authority to the bank for making such payment and it shall not be incumbent upon the bank to enquire whether the amount of any such payment is in fact due or whether or not any dispute exists between you and the beneficiary and you further agree that any payment which the bank makes in accordance or purporting to be in accordance with the LG shall be binding upon you and shall be accepted by you as conclusive evidence that the bank was liable to make such payment or comply with such demands;
5. that your obligations under these terms shall not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate you from the obligations;
6. that as security for the issuance of the LG you agree at any time and from time to time on demand, to deliver, convey, transfer or assign to the bank security of a value and character satisfactory to the bank or to make such payment as the bank may require. You further agree that all or any security held by the bank on your behalf may be held as security and relied upon for all current and contingent liabilities to the bank under the LG;
7. that all payments made shall be free and clear of and without deduction of any taxes of any nature. Should any such payment be subject to any such tax, you shall pay to the bank such additional amount as may be necessary to enable the bank to receive a net amount equal to the full amount payable. (The term "taxes" includes all levies, imposts, duties, charges, fees, deductions, withholdings, turnover tax, stamp tax and any obligations or conditions resulting in a charge). Should any payment (or other sum applied by the bank in or towards satisfaction of your obligations under these terms) not be in local currency, funds will be provided either in the currency of such payment or in local currency. In the latter case the bank may convert the foreign currency at the bank's selling rate for that currency on the day the payment is due to be made or at a rate pre-arranged between you and the bank by way of forward exchange contract. In any event, the rate of exchange applied in such purchase shall be binding on you. You further agree that you will comply with all governmental exchange regulations applicable to the LG and will pay the bank on demand such amount as the bank may be required to expend on account of such regulations;
8. that the Indemnity shall be in addition to any other indemnity, guarantee or other rights the bank may at any time hold and prior to calling upon you the bank shall not be required to pursue or utilise or exhaust any other right, remedy or security which the bank may have;
9. to procure the return to the bank for cancellation of the LG as soon as possible and to pay to the bank in local currency a fee, as separately agreed between you and the bank, payable quarterly in advance on the maximum outstanding amount

payable under the LG effective from the LG is issued. Such fee shall accrue from day to day on the basis of the actual number of days elapsed and a 365 day year;

10. that the Indemnity shall continue in full force and effect until the LG is returned to the bank duly cancelled or the bank is otherwise released from all liabilities under the LG;
11. that any legal action or proceedings with respect to the Indemnity and these terms against you may be brought in the Courts of New Zealand and you accept, for yourselves and in respect of your assets generally and unconditionally the non-exclusive jurisdiction of the aforesaid Courts and appoint the person specified as your agent in the request as your agent for service in respect of such proceedings;
12. that the bank may make alterations to the requested wording of the LG, if in the bank's opinion, such alterations will clarify, correct or otherwise improve the wording of the LG;
13. that the LG shall be issued subject to the Uniform Rules for Demand Guarantees, Publication No. 758 of the International Chamber of Commerce in so far as they are applicable; and
14. these terms shall be governed by and construed in accordance with the laws of New Zealand.

Schedule 4

Bill of Lading / Air Waybill Endorsement

Where you submit a request for the endorsement of a guarantee given by you (the "**Guarantee**") in favour of a third party in relation to a Bill of Lading/Air Waybill and the provides the bank endorsement:

1. You bind yourselves to protect the bank from all claims and responsibilities, legal or otherwise, which may arise in connection with the Guarantee, and authorise the bank to charge your account with any amount the bank may be called upon to pay by reason of the endorsement together with all costs, charges and expenses in connection therewith.
2. You further undertake to take prompt steps to obtain the Bill of Lading/Air Waybill and return the Guarantee to the bank as soon as the Bill of Lading/Air Waybill has been delivered to the Freight Forwarder specified in the Request.
3. You undertake to accept/pay the relevant draft on presentation and/or to honour the drawing under Documentary Credit specified in the Request. Furthermore, you indemnify the bank against all actions, suits, claims or demands which may be brought against the bank or which the bank may be called upon to pay in respect of such endorsement and release.

Schedule 5

Irrevocable Documentary Credit, Irrevocable Letter of Guarantee and Irrevocable Standby Letter of Credit Amendments

Where you submit a request for the amendment of a Irrevocable Documentary Credit, Irrevocable Letter of Guarantee and Irrevocable Standby Letter of Credit, you:

1. understand and acknowledge that any amendment to the instrument will be treated in accordance with the requirements of Uniform Customs and Practice for Documentary Credits and Uniform Rules for bank to bank reimbursements under Documentary Credits, or the International Standby Practices (1998), Publication No. 590 of the International Chamber of Commerce, or the Uniform Rules for Demand Guarantees, Publication No. 758 of the International Chamber of Commerce in so far as they are applicable at the date of issuance of the relevant instrument.

2. authorise the bank to debit its amendment fees and charges from your account.
3. acknowledge that all other terms and conditions remain unchanged.

Schedule 6

Documentary Letter of Credit Transfer

Where you submit a request for the transfer of a documentary letter of credit in respect of which you are the beneficiary:

1. In accordance with the Uniform Customs and Practice for Documentary Credits (2007 Revision), Publication No. 600 of the International Chamber of Commerce, Paris ("**UCP 600**"), Article 38(e), you retain the right to refuse to allow the bank to advise amendments made to the documentary letter of credit (the "ELC") to the transferee specified in the Request (the "**Second Beneficiary**"). Therefore, the bank must obtain your approval before advising any amendments to the second beneficiary.
2. In accordance with UCP 600, Article 38(h), you retain the right to substitute your own invoice(s) and draft(s) for those of the second beneficiary, for amounts not in excess of the ELC amount and for the original unit price(s) (if stipulated and/or subsequently amended), and upon such substitution of invoice(s) and draft(s), you may draw under the ELC for the difference, if any, between your invoice(s) and those of the Second Beneficiary.
3. In the event you fail to supply your own invoice(s) and draft(s) in exchange for those of the second beneficiary on first demand, the bank has the right to deliver to the bank who issued the ELC the documents as received under the transfer of the ELC, including the second beneficiary's invoice(s) and draft(s), without further responsibility to yourselves.

Schedule 7

Export Documentary Letter of Credit Presentation

Where you submit a request for presentation of an export documentary letter of credit to the bank, you acknowledge that the bank retains a right of recourse on negotiated items, unless such negotiation is effected on a without recourse basis.

Schedule 8

Assignment of Proceeds

Where you submit a request for the assignment of proceeds under a letter of credit, you agree that:

1. the bank may pay such sum or sums payable under the letter of credit, not exceeding in aggregate the amount specified in the request to the requested assignee.
2. payment of the proceeds will only be made subject to your presentation of documents under the letter of credit to the bank, and the subsequent acceptance and payment of those documents by the bank that issued the letter of credit.
3. you are responsible to us for all charges and interest, if applicable.