

# General Terms and Conditions governing Business Lending

This document contains important information.  
Please read carefully and retain for future  
reference.

September 2015



## Small and Medium Enterprise Credit Appeals Process.

If the Bank has sanctioned facilities for an amount that is less than the amount for which the SME borrower had applied, or if the Borrower believes that the terms and conditions of the sanction are such that they cannot be accepted or the Borrower is not willing to enter into an alternative repayment arrangement, the Borrower may submit a written appeal, outlining the basis of the appeal within 30 days to The Credit Appeals Officer, P.O. Box 11826, AIB, Bankcentre, Ballsbridge, Dublin 4.

If the Borrower's appeal is unsuccessful, the Borrower may where applicable\*, refer the Bank's decision to the Credit Review Office established by the Minister for Finance.

\*For more information see [www.creditreview.ie](http://www.creditreview.ie)

## Contents

### Section I

#### Introduction and Interpretation

Introduction	1.1.0 - 1.1.3
Interpretation	1.1.4

### Section II

#### Overdraft and Credit Lines

Application	2.0
Repayable on Demand	2.1.1 - 2.1.2
Limit	2.2.1 - 2.2.4
Operation of Account	2.3.1 - 2.3.3
Interest	2.4
Drawdown of Credit Lines	2.5

### Section III

#### Loan Account

Application	3.0
Repayable on Demand	3.1.1 - 3.1.2
Interest	3.2.1
Limit	3.2.2
Repayments	3.3.1 - 3.3.2
Residual Balance	3.4
Early Repayment	3.5
Breakage Cost	3.6.1 - 3.6.3
Early Repayment and Prepayment	3.7
Loans to Small and Medium Enterprises ('SMEs') under the European Investment Bank ('EIB')	
Loan Scheme ('EIB SME Scheme')	3.8
Government Credit Guarantee Scheme	3.9
Drawdown	3.10

### Section IV

#### Term Loan

Application	4.0 - 4.1
Events of Default	4.2
Term Loans to eligible SMEs under the Strategic Banking Corporation of Ireland ('SBCI')	
Loan Scheme ('SBCI SME Scheme')	4.3

### Section V

#### Interest

Application	5.0
Determination of Applicable Interest Rates	5.1.1 - 5.1.4
Variable Interest Rates	5.2.1 - 5.2.8
Market Related Rates and Fixed Interest Rates	5.3.1 - 5.3.8
Basis of Calculation	5.4
Calculation of Interest	5.5
Interest Rests	5.6
Interest Debited to Accounts	5.7

Compound Interest	5.8.1 - 5.8.2
Surcharge Interest	5.9.1 - 5.9.3
Interest Set-Off on Current Account	5.10

## Section VI

Forward Foreign Exchange Facility	
Application	6.0
Credit Risk Equivalent	6.1.1 - 6.1.2
Authorised Dealers	6.2
Contracts	6.3.1 - 6.3.2
Confirmations	6.4.1 - 6.4.3
Operation of Contracts	6.5.1 - 6.5.2
Review, Termination and Payment	6.6
Security	6.7

## Section VII

### General

Application	7.0
Acceptance	7.1.1 - 7.1.2
Drawdown Availability	7.2.1 - 7.2.6
Cancellation	7.3
Operation of Accounts	7.4.1 - 7.4.2
Joint and Several Liability	7.5
Option of Annual Review	7.6
Facilities involving Contingent Obligations	7.7.1 - 7.7.5
Fees, Charges and Expenses	7.8.1 - 7.8.3
Security	7.9.1 - 7.9.16
Borrower's Representations and Warranties	7.10
Borrower's Covenants, Compliance and Indemnity	7.11
Bank's Certificate Binding	7.12
Breach and Variation	7.13
Full Payment	7.14
Exchange Loss	7.15
Business Days	7.16
No Assignment by Borrower	7.17
Assignment by the Bank	7.18
Reference of Debts on Default	7.19
Disclosure within AIB Group	7.20
Severability	7.21
Notice	7.22
Force Majeure	7.23
Applicable Law	7.24
Set-Off	7.25
Conflicts of Interest	7.26
Liquidity Costs	7.27
Guarantor Execution	7.28
Entire Agreement	7.29
Counterparts	7.30

The information detailed in this brochure is effective from September 2015.

# Section I

## Introduction and interpretation

### Introduction

- 1.1.0 This booklet sets out the general terms and conditions governing lending and other facilities ("the facilities") provided to Customers ("the Borrowers" which expression shall, where the context so permits, include their successors and permitted assigns) by Allied Irish Banks, p.l.c. ("the Bank" which expression shall, where the context so permits, include its successors, assigns, chargees, transferees or sub-participants) where the facilities invoke all or any of the terms and conditions set out herein.
- 1.1.1 Facilities provided by the Bank include, for example, the following:
- (i) **overdraft:** usually short term facilities for working capital where the account balance shows fluctuations between debit and credit;
  - (ii) **credit lines:** classified as overdraft facilities which may be used for working capital only for business or farming purposes;
  - (iii) **loan account:** usually medium to long term facilities with customised repayment options;
  - (iv) **term loan:** usually facilities intended for a specific purpose repayable by regular repayments within a stated period;
  - (v) forward foreign exchange facilities, bank guarantees and documentary credits, bonds and indemnities provided by the Bank to third parties on behalf of Customers.

The above examples are not intended to be exhaustive and the terms and conditions set out in this booklet may be invoked to apply to other facilities.

- 1.1.2 Other specific terms and conditions may apply to facilities in accordance with the relevant letter of sanction or other agreement in writing between the Bank and the Borrower and to the extent (if any) that the specific terms and conditions conflict with the general terms and conditions set out in this booklet, then the specific terms and conditions will apply.

For the purpose of clarity, it should be noted that unless a new facility is sanctioned to renew, replace or restructure existing facilities, the existing facilities will continue to be subject to the terms and conditions on which they were sanctioned.

- 1.1.3 The Bank may from time to time change the terms and conditions set out in this booklet and

all facilities will be governed by the then changed terms and conditions.

## Interpretation

1.1.4 In this booklet unless the context otherwise requires:

- (i) references to sections and clauses refer to the relevant sections and clauses of this booklet; and
- (ii) where the context so permits the singular includes the plural and vice versa; and
- (iii) the headings or marginal titles used in this booklet are for ease of reference only and will not affect the construction or interpretation thereof; and
- (iv) references to “Customer” are deemed to include “Borrower”; and
- (v) references to any statutory provision, or to any order or regulation includes a reference to that provision, order or regulation as extended, modified, replaced or re-enacted from time to time; and
- (vi) “Group” means the Borrower, every Holding Company and Subsidiary of the Borrower for the time being (if any) and every Subsidiary of every such Holding Company for the time being (if any) and includes companies falling within the definition of “group of companies” as defined in Section 8 of the Companies Act 2014; and
- (vii) “Holding Company” means a holding company within the meaning of Section 8 of the Companies Act 2014; and
- (viii) “Regulatory Authority” will include the Central Bank of Ireland, the European Central Bank, the Minister for Finance of Ireland and any other regulatory, fiscal, monetary or other authority in or of Ireland or elsewhere having jurisdiction over the Bank or any subsidiary of the Bank whether or not having the force of law; and
- (ix) “Subsidiary” means a subsidiary as defined in Section 7 of the Companies Act 2014 and includes companies falling within the definition of “wholly owned subsidiary” as defined in section 8 of the Companies Act 2014; and
- (x) references to the “terms” and/or “conditions” of any facility include, as applicable, any term, condition, covenant, representation, warranty or other obligation in such facility.

# Section II

## Overdraft and Credit Lines

### Application

- 2.0 The terms and conditions set out in this section apply to overdraft and credit line facilities.

### Repayable on Demand

- 2.1.1 Overdraft and credit line facilities are repayable on demand. However, in normal circumstances, the Bank expects that the overdraft or credit line facilities will be available until the review date stated in the letter of sanction, without obligation on the part of the Bank to continue to provide the facility after such date.
- 2.1.2 Without prejudice to the Bank’s right to demand repayment at any time, the happening of any of the events set out in clause 4.2 may lead to the Bank terminating the facility and making demand for payment, with or without notice to the Borrower.

### Limit

- 2.2.1 A limit representing the amount of the facility will be stated in the letter of sanction and will apply to the facility.
- 2.2.2 The Borrower must ensure that the debit balance on the current or credit line account does not exceed the limit.
- 2.2.3 With the exception of Overdrafts to which Prime Rate applies, the balance on a current account or credit line account must achieve a minimum period of thirty days credit or nil balance (whether consecutive or otherwise) during the twelve months following the date of sanction and in each subsequent period of twelve months during the continuance of the facility.
- 2.2.4 Where a Borrower maintains more than one business current account at the same branch (other than excluded current accounts) then the Bank may agree that an overdraft limit will operate as a limit governing the net aggregate balance on those current accounts. In such circumstances, the Borrower must at all times maintain the net position within the limit. If a net excess would otherwise occur, cheques may be returned unpaid notwithstanding that the particular account on which the cheque is drawn shows a credit balance.

## Operation of Account

- 2.3.1 Any item which if paid would have the effect of overdrawing the account in the absence of or in excess of a sanctioned limit may be returned unpaid by the Bank. If, in its discretion, the Bank pays any such item, this will not give rise to any obligation on the Bank to pay any such items on any subsequent occasion.
- 2.3.2 The Bank will not be obliged to give prior notice regarding the presentation and/or dishonour of items drawn on the account. The giving of such notice on any specific occasion will not mean that the Bank will do so on any subsequent occasion.
- 2.3.3 Cheques and other items subject to collection which are lodged to accounts are subject to the possibility of non-payment ("uncleared effects"). The Borrower will not be entitled as of right to draw against uncleared effects. Payment by the Bank against uncleared effects will not give rise to any obligation on the Bank to do so on any subsequent occasion.

## Interest

- 2.4 Compound interest will accrue on debit balances from time to time, calculated and charged in accordance with Section V.

## Drawdown of Credit Lines

- 2.5 Credit Line facilities may only be drawn down by way of transfer to the Borrower's working account.

# Section III

## Loan Account

### Application

- 3.0 The terms and conditions set out in this section apply to loan account facilities.

### Repayable on Demand

- 3.1.1 Loan account facilities are repayable on demand. However, in normal circumstances, the Bank expects that the loan will be available as stated in the letter of sanction.
- 3.1.2 Without prejudice to the Bank's right to demand repayment at any time, the happening of any of the events set out in clause 4.2 may lead to the Bank making demand for payment, with or without notice to the Borrower.

### Interest

- 3.2.1 Compound interest will accrue on the balance of the loan account from time to time, calculated and charged in accordance with Section V.

### Limit

- 3.2.2 A limit representing the amount of the facility will be stated in the letter of sanction and will apply to the facility. This limit will reduce in line with the repayments specified in the letter of sanction or as otherwise agreed. Where the repayments are inclusive of principal and interest the limit will increase when the Bank debits interest to the loan account.

### Repayments

- 3.3.1 The Borrower will punctually pay the repayments specified in the letter of sanction. The Borrower may be required to complete a direct debiting and/or a standing order instruction for the purpose of the repayments. At the discretion of the Bank, notwithstanding any intervening expiry date, any direct debit(s) and/or standing order(s) for the agreed periodic repayment amounts may continue to be presented until the full amount of the loan and any other amounts due in respect of the loan have been repaid.

- 3.3.2 If the interest rate varies during the repayment period the Bank may (but without obligation to do so)
- (a) vary the amount of the repayments:
    - (i) by changing the amount of the variable direct debit(s) and/or by accepting a new standing order instruction(s) for the changed amount (where applicable)
    - or
    - (ii) on service of thirty days' notice to the borrower
  - (b) adjust the number of the repayments
  - (c) adjust the amount of the final repayment.

### Residual Balance

- 3.4 Any residual balance outstanding at the end of the repayment period (whether arising from fluctuations in the applicable interest rate, default by the Borrower in the repayment of principal or interest on the due dates, timing of drawdown, scheduled repayments falling due on non-business days, or otherwise howsoever) will attract variable interest at the then appropriate rate together with surcharge interest and will become immediately due and payable, unless the Bank, in its absolute discretion, (a) agrees to other repayment arrangements with the Borrower or (b) agrees to continue to present any direct debit(s) and/or standing order(s) for the agreed periodic repayment amounts until the full amount of the residual balance and any other amounts due in respect of the loan have been repaid. Any credit balance which remains outstanding will become immediately available to the Borrower.

### Early Repayment

- 3.5 At any time during the period of a facility when a variable interest rate applies, the Borrower will be entitled without penalty to effect full or partial early repayment of the loan.

### Breakage Cost

- 3.6.1 At any time during the period of a facility when a fixed interest rate applies (including the duration of an Interest Period as defined in clause 5.3.2) the following definitions will apply:

“Prepayment” means

- (i) if the Bank at its discretion agrees to allow full or partial out of course repayment or conversion of the facility to another interest rate, or
- (ii) if the Borrower makes payment following demand for payment by the Bank.

“Cost of Funds” has the meaning set out in clause 5.3.2 (ii).

“Breakage Cost” means the replacement cost to the Bank resulting from a Prepayment.

- 3.6.2 Except where payment is being made immediately following demand by the Bank, the Borrower must serve at least three business days prior notice to the Bank of any proposed Prepayment.

- 3.6.3 Prepayment will be subject to the payment by the Borrower of a Breakage Cost, to be calculated:

- (i) where the period for which interest is fixed is less than one year or where the interest period is fixed for one year with no scheduled repayments during such one year period, using the following formula:  
Breakage Cost =  $A \times U \times D\%$ , where:

“A” is the amount of the Prepayment and

“U” is the unexpired term of the fixed interest rate period, and

“D” is the difference between the Cost of Funds applying to the facility when the rate was fixed and the Cost of Funds applying at the time of Prepayment, for the amount of “A” for the term of “U”.

- (ii) where the period for which interest is fixed is more than one year or where the interest period is for one year with scheduled repayments during such one year period, Breakage Cost will be calculated taking into account the following:

- (a) the difference between the Cost of Funds applying to the facility when the rate was fixed, and the Cost of Funds at the time of the Prepayment in the amount of the Prepayment, and

- (b) associated cashflows for the remainder of the fixed rate term and applying a discount factor in accordance with standard net present value methodology.



## Early Repayment and Prepayment

- 3.7 Any early Repayment or Prepayment is treated as a permanent reduction and cannot be redrawn. Any such amount will shorten the repayment period but the Borrower must continue to make the repayments specified in the letter of sanction unless otherwise agreed.

## Loans to Small and Medium Enterprises ('SMEs') under the European Investment Bank ('EIB') Loan Scheme ('EIB SME Scheme')

- 3.8 Where facilities which are sanctioned under the EIB SME Scheme the facilities are supported by the EIB and are sanctioned at an interest rate which is at least 0.70 % (seventy basis points) lower than the rate which would apply to such facilities without the EIB support. EIB SME facilities are intended for the purposes of projects which comply with the eligibility criteria agreed between the Bank and the EIB from time to time (Projects) and the following conditions will apply:

- (i) the facilities will be used exclusively for the purposes of the Projects for which they were envisaged and within 3 years of the date of sanction.
- (ii) where the Borrower is bound to comply with public procurement rules, sub-projects undertaken by the Borrower with the proceeds of the loan will comply with the relevant applicable EU and Irish legislation.
- (iii) The Borrower will permit the persons appointed by the Bank and/or EIB to inspect all sites, installations and works comprising the Projects and provide such persons with all necessary assistance and information for such purposes.
- (iv) The Borrower consents to disclosure by the Bank to EIB of details of the Projects, the facilities, the latest registered financial statements of the Borrower and such further information as the EIB may require concerning the activities and general financial position of the Borrower.
- (v) The assets or investments acquired or developed as part of the Projects will not be located outside Ireland or another EU state and will be maintained by the Borrower in good working order.

- (vi) The Borrower will not use the facilities for any of the following:
  - (a) Production of weapons and ammunition, arms, military or police equipment or infrastructures, and equipment or infrastructure limiting people's individual rights and freedom (i.e. prisons, detention centres of any form);
  - (b) Gambling and related equipment;
  - (c) Tobacco manufacturing, processing, or distribution;
  - (d) Activities involving live animals for experimental and scientific purposes;
  - (e) Activities which give rise to environmental impacts that are not largely mitigated and/or compensated (see also the Borrower's Covenants at Clause 7.11 (vii) and (viii) about compliance with all applicable laws (including laws relating to the protection of the environment) relating to the business and property of the Borrower);
  - (f) Any purpose which in the opinion of the Bank is ethically or morally controversial;
  - (g) Pure real estate development activity;
  - (h) The Purchase of Farmland.

## Loans to Small and Medium Enterprises ('SMEs') covered by the Scheme Guarantee under the Credit Guarantee Scheme (the 'Scheme') in accordance with Credit Guarantee Act 2012

- 3.9 Loans or other facilities supported by the Scheme ('Scheme Facilities') will be subject to the following:
- (i) the Borrower covenants that all information disclosed in or in relation to the application for the Scheme Facilities is in all respects true and accurate;
  - (ii) the Borrower acknowledges that notwithstanding the Scheme Guarantee, the Borrower remains liable for payment of 100 % of the outstanding Scheme Facility and that normal recovery and enforcement procedures (against the Borrower and any guarantor) will be pursued by the Bank before any claim is made by the Bank under the Scheme Guarantee;

- (iii) (a) the Borrower covenants with the Bank that the Borrower will pay the Department of Jobs, Enterprise and Innovation or its nominated operator ('the Operator') an annual Premium in respect of the Scheme Guarantee of 2 % of the annual outstanding principal balance of the Scheme Facility in accordance with the Premium Schedule provided to the Borrower by the Bank;
- (b) prior to drawdown of the whole or any part of the Scheme Facility the Borrower must:
  - Pay the first annual premium to the Bank on behalf of the Operator, and
  - Make provision for payment of the remaining Premium payments to the satisfaction of the Operator.
- (c) if the Bank is notified by the Operator that the Borrower has failed to pay a Premium, the Bank will be entitled (but not obliged) to pay the Premium at debit of the Scheme Facility account or any other account in the name of the Borrower without any obligation to notify the Borrower. Alternatively the Bank may at its discretion pay any unpaid Premium from its own funds and will be entitled to recover payment from the Borrower as part of the Scheme Facility.
- (iv) all recoveries received by the Bank will be applied in accordance with the terms of the Scheme. Further information on this is available on the Government website [www.djei.ie](http://www.djei.ie)

### Drawdown

- 3.10 In order to draw down loan account facilities the Borrower must comply with all pre-drawdown conditions stated in the Letter of Sanction and may also be required to complete drawdown instructions and a direct debiting instruction.

## Section IV

### Term Loan

#### Application

- 4.0 The terms and conditions set out in this section apply to term loan facilities.
- 4.1 The provisions of clauses 3.2.1 to 3.10 inclusive and 7.2.1 to 7.2.6 inclusive apply to term loan facilities as if all references therein to "loan" were references to "term loan".

#### Events of Default

- 4.2 A term loan though expressed to be repayable over or within a specified period may be terminated by the Bank and the Bank may demand early repayment at any time with or without notice to the Borrower upon the occurrence of any of the following events:
  - (i) On the failure by the Borrower to make any repayment of principal or interest on the date it is due.
  - (ii) On the Borrower ceasing or threatening to cease to carry on business or any substantial part thereof.
  - (iii) On the death of the Borrower or of any guarantor for the Borrower.
  - (iv) If any guarantor notifies the Bank that they no longer wish to act as guarantor or that the guarantee is to terminate or on a material change relevant to a guarantor occurring which is in the opinion of the Bank prejudicial to the Bank's interests.
  - (v) On the bankruptcy of, or commission of any act of bankruptcy by, the Borrower.
  - (vi) In respect of a company Borrower, the presentation of a petition for winding up or for the appointment of an examiner, the convening of a meeting for the purpose of considering a resolution or the passing of a resolution to wind up or the appointment of a receiver.
  - (vii) On distress being levied against the goods of the Borrower or on the same being taken in execution pursuant to any decree, judgement or order of a court of competent jurisdiction.



- (viii) On judgement being obtained against the Borrower and remaining unpaid for a period of fourteen days from the date of such judgement.
- (ix) On a material change relevant to the Borrower occurring which is in the opinion of the Bank prejudicial to the Bank's interests.
- (x) On the failure by the Borrower to provide any security specified in the letter of sanction promptly or within the period therein mentioned (if any) or within such extended period as may be agreed between the Bank and the Borrower.
- (xi) On the breach, non-observance or non performance by the Borrower, any member of the Group or any guarantor of any term or condition attaching to any facility or any other financial indebtedness whether with the Bank or any other party.
- (xii) If any money becomes due or becomes capable of being declared due and payable under any guarantee or indemnity given by the Borrower, any member of the Group, or any guarantor to the Bank or any other party.
- (xiii) On discovery by the Bank that any information supplied by the Borrower was false, misleading or inaccurate.
- (xiv) If any security held by the Bank, any of its subsidiaries or any other party for the obligations of the Borrower, any member of the Group or any guarantor to the Bank, any of its subsidiaries or any other party (whether as principal or surety and whether alone or jointly with any other person or party) becomes enforceable.
- (xv) If in the opinion of the Bank any change takes place in any applicable law or regulation or in the interpretation thereof which will make it unlawful for the Bank to maintain or give effect to its obligations in respect of the facility.
- (xvi) On any change in the shareholding, management or control of a company Borrower which, in the opinion of the Bank, is prejudicial to the Bank's interests.

### **Term loans to eligible Small and Medium Enterprises ('SMEs') under the Strategic Banking Corporation of Ireland ('SBCI') Loan Scheme ('SBCI SME Scheme')**

- 4.3 Where term loans are sanctioned under the SBCI SME Scheme, the facilities are supported by the SBCI (who in turn are supported with finance by the European Investment Bank, Kretanstalt fur Wiederaufbau and the Ireland Strategic Investment Fund (together 'SBCI Funders')) and are sanctioned at an interest rate which is lower than the interest rate which would apply to such facilities without the SBCI support. Term loans sanctioned under the SBCI SME Scheme are intended for the purposes of projects which comply with the eligibility criteria set by the SBCI from time to time (each an "SBCI Scheme Project") and which are available on [www.aib.ie](http://www.aib.ie). For as long as a facility is sanctioned under the SBCI SME Scheme, the following additional conditions will apply:
- (i) the Borrower represents, warrants and undertakes that:
    - (a) the Borrower will use the facility exclusively for the financing of the specified SBCI Scheme Project;
    - (b) except where the facility is a working capital facility, the Borrower will complete the relevant SBCI Scheme Project by a date which has been agreed between the Borrower and the Bank;
    - (c) where the Borrower is bound to comply with public procurement rules, the SBCI Scheme Project will comply with the relevant applicable EU and Irish legislation. Where the Borrower is not bound to comply with public procurement rules, the Borrower will, when purchasing equipment, securing services and ordering works for the SBCI Scheme Project, use procurement procedures which respect the criteria of economy and efficiency and, in the case of public contracts, the principles of transparency, equal treatment and non-discrimination on the basis of nationality;
    - (d) except where the facility is a working capital facility, the Borrower will maintain, repair, overhaul and renew all property forming part of the specified

SBCI Scheme Project, as required in order to keep it in good working order;

- (e) to keep books and records of all financial transactions and expenditures in connection with the specified SBCI Scheme Project;
- (f) to the best of its knowledge, no funds invested in the specified SBCI Scheme Project by the Borrower are of illicit origin, including products of money laundering or linked to the financing of terrorism and the Borrower will promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds;
- (g) provided the Borrower has received reasonable notice, the Borrower will allow persons designated by the SBCI, the SBCI Funders, and, where required under any applicable EU law, any persons designated by any institution or other body in the European Union ('Designated Person'), to during working hours, visit and conduct such checks at the Borrower's business and any sites, installations and works comprising the SBCI Scheme Project, interview representatives including employees of the Borrower, review and (to the extent permitted by law) take copies of books and records of the Borrower in relation to the specified SBCI Scheme Project and provide any Designated Person with all necessary assistance and information for such purposes;
- (h) the Borrower will not obstruct any Designated Person from contacting any person involved in or affected by the specified SBCI Scheme Project;
- (i) where any member of its management body has been convicted by a final and irrevocable court ruling of any of the offences of fraud, corruption, collusion, obstruction, money laundering or financing of terrorism ('Criminal Offence'), perpetrated in the course of the exercise of his/her professional duties, the Borrower will take, as soon as reasonably possible, appropriate

measures to ensure that such person is excluded from any activity in relation to any funds made available by the Bank under any facility or in relation to the specified SBCI Scheme Project;

- (j) the Borrower will promptly inform the Bank of any measure taken by the Borrower in relation to clause 4.3(i)(i) above;
- (k) the Borrower is not a defendant in any proceedings brought by the European Commission;
- (l) to the extent permitted by law, the Borrower will promptly inform the Bank of any credible allegation, complaint or information with regard to any Criminal Offence in relation to the specified SBCI Scheme Project;
- (m) to the extent permitted by law, the Borrower will promptly provide the Bank with any information or documentation in relation to the facility, the Borrower or the SBCI Scheme Project which the Bank reasonably requests;
- (n) the Borrower satisfies the eligibility criteria for de minimis state aid loans or agricultural investment loan scheme ('AILS') loans (as applicable) as at the date of the letter of sanction and which criteria are available on the Bank's website;
- (o) the Borrower satisfies the eligibility criteria for an eligible SME as at the date of the letter of sanction and which criteria are available on the Bank's website; and
- (p) the Borrower will, where applicable, provide the Bank with a valid declaration setting out the amount, if any, of de minimis state aid received by the Borrower in the current fiscal year and the two previous fiscal years.
- (q) the Borrower will, where applicable, provide the Bank with a valid declaration setting out the amount, if any, of any other aid received by the Borrower relating to the SBCI Scheme Project.

- (ii) the Borrower acknowledges, accepts and consents that:
  - (a) the Bank will provide information about the Borrower, the SBCI Scheme Project, the loan which it is required to provide to the SBCI, the SBCI Funders, any EU Body and any State Body;
  - (b) the SBCI Funders may be obliged to divulge information relating to the Borrower and/or the SBCI Scheme Project to an institution or other body in the European Union in accordance with EU law; and
  - (c) SBCI may post information on its website about the Borrower, the SBCI Scheme Project and the loan.

## Section V

### Interest

#### Application

- 5.0 The terms and conditions set out in this section apply to all facilities.

#### Determination of Applicable Interest Rates

- 5.1.1 The interest rate applicable to a facility will be determined by the Bank by reference to the business of the Borrower and the purpose, risk and term of the facility.
- 5.1.2 The variable or fixed interest rate applicable to facilities will be stated in the letter of sanction with reference where appropriate to the interest rate category determined by the Bank.
- 5.1.3 The Bank's interest rate categories are, at present, as follows:
  - (i) A, AA, AAA or Charity (as appropriate to the particular facility)
  - (ii) Premium Business
  - (iii) Prime
  - (iv) Base Lending
  - (v) Credit Lines
  - (vi) Market Related
  - (vii) Standard Variable Business Loan

These interest rate categories are not exhaustive and the Bank will be at liberty at any time to extend or modify them. Any such changes and the dates applicable will be notified to Borrowers in a manner which the Bank deems appropriate.
- 5.1.4 The Bank may sanction facilities at a rate expressed to be higher or lower than the rate relevant to the interest rate category.

#### Variable Interest Rates

- 5.2.1 Interest rates applicable to facilities sanctioned by reference to A, AA, AAA, Charity, Premium Business, Prime, Base Lending, Standard Variable Business Loan and Credit Line rates are variable interest rates. These rates and the composition of them may change.

- 5.2.2 Variations in rates applicable to A, AA, Standard Variable Business Loan and Charity from time to time will be notified to Customers by publication in at least one national newspaper. The current A, AA, Standard Variable Business Loan and Charity rates from time to time will be shown on the interest rate notices displayed at all branches of the Bank.
- 5.2.3 Premium Business Rate is set by the Bank monthly, or more or less frequently as the Bank may see fit. Variations will be effective from the first business day of each month.
- 5.2.4 Prime, Base Lending Rate and Credit Line rates are set by the Bank weekly or more or less frequently as the Bank may see fit. Variations are published weekly in a national newspaper and are effective from the date advised in that notification.
- 5.2.5 If the Bank changes the frequency of setting Premium Business, Prime, Base Lending or Credit Line rates, customers will be notified by publication in at least one national newspaper.
- 5.2.6 The current interest rate applicable to a facility and the effective date of any interest rate change will be shown on the account statement, if any, next issued after the interest rate change.
- 5.2.7 If a variable interest rate together with a margin (if any), would result in a current interest rate for a facility which is below zero, such current interest rate will be deemed to be zero.
- 5.2.8 Details of current interest rates are available at all times on request to the Bank.

### **Market Related Rates and Fixed Interest Rates**

- 5.3.1 The Bank may agree with the Borrower to fix the applicable interest rate for all or part of the period of a facility.
- 5.3.2 Where facilities are sanctioned by reference to a Market Related rate of interest and where otherwise referred to in this booklet, letters of sanction, or other agreement between the Bank and the Borrower, the following will apply:
  - (i) "Market Related rate" means the aggregate of Cost of Funds and Reserve Asset Cost;
  - (ii) "Cost of Funds" means, in relation to a facility, the cost to the Bank as determined by the Bank (expressed as a percentage per annum), given the nature of the facility and prevailing market conditions, of raising funds from external sources.

- (iii) "Reserve Asset Cost" means the cost to the Bank (expressed as a percentage per annum) from time to time arising in relation to funding a facility in respect of the Bank having to meet any liquidity or minimum reserve ratio, special deposit or similar requirements imposed by any Regulatory Authority in relation to a facility; and
- (iv) "Interest Period" means a period in respect of which interest on the amount of the facility outstanding is calculated and charged. An Interest Period cannot extend beyond a capital or principal repayment date and, at present, is a period not greater than twelve months, but this may change.

### **5.3.3 Where facilities are sanctioned by reference to a Market Related rate of interest then:**

- (i) the Bank will agree the Interest Period with the Borrower; and
- (ii) the rate of interest will be fixed for each Interest Period; and
- (iii) the first Interest Period will commence on the date of drawdown and each subsequent Interest Period will, unless otherwise agreed, be of the same duration and will commence on the expiry date of the immediately preceding Interest Period; and
- (iv) the Market Related rate of interest for the first Interest Period will be set by the Bank at the date of drawdown and reset at the start of each subsequent Interest Period.

### **5.3.4 Unless otherwise stated the Bank will quote interest rates by reference to Market Related rates on any particular day for value two days later.**

### **5.3.5 If the interest rate category which is applicable to a facility is a Market Related rate or expressed to be based on a benchmark rate, such as EURIBOR or LIBOR and the applicable interest rate at any time in such interest rate category, together with a margin (if any), would result in a current interest rate for that facility which is below zero, the current interest rate will be deemed to be zero.**

### **5.3.6 Breakage Cost: See clauses 3.6.1 to 3.6.3 inclusive.**

### **5.3.7 At any time during the period of a facility when a fixed interest rate applies (including the duration of an Interest Period) interest will accrue at the fixed interest rate specified in the letter of sanction, or as agreed between the Borrower and**

the Bank. However, if the cost to the Bank of making or maintaining the facility increases by an amount which the Bank deems material as a result of:

- (i) an increase in Reserve Asset Cost; and/or
- (ii) any change in any law or regulation including any tax (other than tax on overall income) being assessed on the Bank, then the interest rate will be increased by the Bank by an amount to compensate the Bank for such increased cost.

5.3.8 At the expiration of a fixed interest rate period the Bank may agree with the Borrower a further fixed interest rate period at such interest rate and subject to such repayment arrangements as may be set by the Bank. In the absence of agreement variable interest at the rate which the Bank deems appropriate will apply.

### **Basis of Calculation**

5.4 Interest is calculated on a daily basis using the 365 day count convention. This means that interest is calculated daily on the relevant balance applying the relevant interest rate divided by 365.

Following Ireland's entry into the European Monetary Union the Bank may adopt the more common European basis of calculating interest on a daily basis using the 360 day count convention.

This means that interest is calculated daily on the relevant balance applying the relevant interest rate divided by 360. Any such change in the day count convention will not result in either gains or losses to Borrowers (other than minor rounding) as interest rates will be adjusted to take account of which day count convention is used. In the event of a change in the day count convention the Bank will advise Customers by publication in at least one national newspaper or by such other manner as the Bank deems appropriate.

### **Calculation of Interest**

5.5 Interest is calculated on the balance outstanding each day on accounts after adjustment is made for cheques and other items in course of collection to and from the particular branch in which the account is held. Interest is, therefore, not necessarily charged on the daily balance of the account as shown on the Borrower's

statement. The adjustment will reflect the actual time at which value will have been given or obtained by the Borrower's branch for items drawn on or lodged to the account.

### **Interest Rests**

5.6 Interest is debited to accounts quarterly in March, June, September and December in each year (except in the case of facilities sanctioned by reference to a Market Related rate) and up to the date of final repayment of the facility, but this may change, in which case the Bank will give three months' notice in at least one national newspaper.

### **Interest Debited to Accounts**

5.7 Interest will be debited to the account on which it has accrued or to such other account as may be agreed between the borrower and the Bank.

### **Compound Interest**

5.8.1 All interest charged by the Bank on facilities is compound interest. This means that interest debited to accounts will itself bear interest until it is paid. This is without prejudice to any other right the Bank may have arising out of any failure by the Borrower to pay interest when due.

5.8.2 Compound interest will continue to accrue on all balances until the full amount due to the Bank has been repaid notwithstanding any demand by the Bank for payment, the termination of the Banker/Customer contract, bankruptcy, liquidation, examinership, or the appointment of a receiver in respect of the Borrower, or the issue of proceedings by the Bank against the Borrower for payment.

### **Surcharge Interest**

5.9.1 Unscheduled or unauthorised borrowings by a Customer oblige the Bank to arrange impromptu funding in the money market and generate additional administrative activities. This gives rise to costs, expenses and risk to the Bank which are covered by the application of surcharge interest. Surcharge interest, in addition to the interest applicable to the facility, will be charged:

- (i) where the balance (or the net aggregate balance) on any account(s) exceeds the relevant limit or an account is overdrawn without a sanctioned limit ("excess balances"); and

- (ii) where any residual debit balance remains unpaid after the Bank has demanded payment or after the expiry of the review date or the repayment period of a facility, without the Bank's agreement to extend or renew the facility ("residual balances").

Surcharge interest will apply to excess balances and residual balances for the duration thereof.

- 5.9.2 Surcharge interest will be debited to Borrowers' accounts in the same manner as other interest charges. Surcharge interest will be itemised separately when debited to accounts.
- 5.9.3 The surcharge rate of interest is subject to change from time to time. Changes will be notified by publication in at least one national newspaper and will be effective from the date specified in the notice. Details of the surcharge interest rate current from time to time are available at all times on request to the Bank and are shown on the interest rate notices displayed at all branches of the Bank.

### **Interest Set-Off on Current Account**

- 5.10 Where a Borrower has an overdraft and at the same time maintains a credit current account with the same branch and the Bank has a right to set-off the balances in those accounts, the Bank may agree to charge a reduced rate of interest (subject to a minimum of 1% per annum, but this may change) on that portion of the debit balance covered by the credit balance. No set-off for interest purposes is allowed for any facility other than overdraft. For further details, please refer to the separate set-off advice and accompanying Terms and Conditions for Set-Off (together the "Set-Off Conditions") that will apply to any such overdraft. If there is any conflict between the general terms and conditions set out in this booklet and the "Set-Off Conditions", then the "Set-Off Conditions" will prevail.

## **Section VI**

### **Forward Foreign Exchange Facility**

#### **Application**

- 6.0 The terms and conditions set out in this section apply to forward foreign exchange facilities under which the Customer and the Bank will from time to time enter into contracts ("the Contracts") with each other for the future delivery to one another of various amounts in various foreign currencies.

#### **Credit Risk Equivalent**

- 6.1.1 In this section, letters of sanction, and where otherwise referred to in agreements between the Bank and the Customer, "Credit Risk Equivalent" means the Bank's determination (expressed in Euro) of the possible loss to the Bank if the Customer were not to perform the Customer's obligations under Contracts entered into or applied for.
- 6.1.2 Determination by the Bank of the amount of the Credit Risk Equivalent in relation to any Contract is an estimation only and will not limit the actual amount payable by the Customer to the Bank in the event of non-performance by the Customer or in the event of termination of the facility by the Bank.

#### **Authorised Dealers**

- 6.2 Authorised dealers are:
  - (i) on behalf of the Bank, any Bank Official at the branch of the Bank where the Customer's working account is held ("the Customer's Branch") and, by prior arrangement with the Bank, all AIB Dealing Room personnel; and
  - (ii) on behalf of the Customer, the Customer him/herself or such person or persons as are duly authorised by the Customer.

Each party will be entitled to presume that the person with whom they are dealing is who they purport to be regardless of the circumstances prevailing at the time and Contracts will be binding accordingly.



## Contracts

- 6.3.1 Under a forward foreign exchange facility the Customer may from time to time apply to the Customer's Branch to enter into Contracts.
- On receipt of such application the Bank will calculate the Credit Risk Equivalent of each Contract and provided that the aggregate (if any) of the Credit Risk Equivalent does not exceed the amount set out in the letter of sanction, the Bank may then agree to enter into the Contract applied for.
- 6.3.2 Contracts will be made by authorised dealers principally by telephone but may also be made by way of written instructions, fax or other electronic means. In the case of telephone transactions the Contract will be immediately binding on the oral agreement of authorised dealers. In the case of transactions in writing or by fax or other electronic means, the Contract will be immediately binding on acceptance of the proposed Contract by the party to whom it was addressed.

## Confirmations

- 6.4.1 Written confirmations of all Contracts will be sent by the Bank to the Customer for formal acknowledgement and return to the Bank. However, failure to acknowledge will not affect the binding nature of the Contract.
- 6.4.2 Any discrepancy between the deal and the confirmation must be notified in writing to the Bank's authorised dealer within seven days of the date of the confirmation otherwise the confirmation is deemed to be an accurate reflection of the Contract.
- 6.4.3 In the event of disagreement, the record of the deal made by the Bank's authorised dealer is conclusive.

## Operation of Contracts

- 6.5.1 The Customer will, in accordance with the terms of each Contract:
- (i) make delivery of any currency sold to the Bank; and
  - (ii) provide cash on the Customer's own account or otherwise pay the Bank for any currency purchased from the Bank and take due delivery of such currency; and

- (iii) in the case of Contracts with fixed maturity dates, the Customer may not make or claim delivery of any currency prior to the fixed date without the prior consent of the Bank.
- 6.5.2 If the Customer does not, in accordance with the terms of the Contract, pay or does not take delivery or give disposal instructions in respect of any currency purchased from the Bank, the Bank may at its discretion:
- (i) at the Customer's sole risk continue to hold the currency available to the Customer (unless specifically instructed by the Customer to dispose of it) in such manner and for as long as the Bank may see fit; or
  - (ii) dispose of the currency with or without notice to the Customer at whatever rate or value the Bank may see fit.

## Review, Termination and Payment

- 6.6 The forward foreign exchange facility will be available until the review date stated in the letter of sanction, however, if the Customer fails to perform the Customer's obligations under any Contract or upon the happening of any of the events set out in clause 4.2 then:
- (i) the Bank may serve on the Customer a notice ("the Termination Notice") terminating all Contracts then outstanding under the forward foreign exchange facility; and
  - (ii) the Bank will calculate, in the manner provided in (iii) below, the difference (if any) between the amount payable to the Bank by the Customer and to the Customer by the Bank at foot of all Contracts so terminated ("the Net Amount"); and
  - (iii) the Net Amount will be calculated by the Bank applying the relevant rate of exchange (as determined by the Bank) between the Euro and the relevant currency or currencies in which the obligations of each of the Customer and the Bank, immediately prior to the issue of the Termination Notice, were denominated and converting the amount of such currency or currencies into Euro; and
  - (iv) the Net Amount will be paid by the Bank to the Customer or by the Customer to the Bank on the date specified in the Termination Notice.

In the case of a Net Amount payable by the Bank to the Customer, such Net Amount may be set-off in reduction of the obligations of the Customer to the Bank with the balance (if any) being paid to the Customer.

In the case of a Net Amount payable by the Customer to the Bank, the Bank will be entitled to debit such Net Amount to the working account of the Customer or such other account in the name of the Customer as the Bank deems appropriate (including, where necessary, the opening of a new account by the Bank for that purpose).

Any resulting debit balance on such new account will be payable on demand and will constitute an excess balance and will attract interest, calculated and charged in accordance with Section V.

## Security

- 6.7 In addition to any security specified in the letter of sanction, the Customer will, if called upon to do so by the Bank, provide such further security as the Bank may require from time to time to cover the Credit Risk Equivalent.

# Section VII

## General

### Application

- 7.0 The terms and conditions set out in this section apply to all facilities.

### Acceptance

- 7.1.1 If the Borrower draws down or avails of a facility in whole or in part this will constitute acceptance by the Borrower of the terms and conditions of the facility.
- 7.1.2 The Bank may, at its discretion, at any time extend any acceptance period specified in the letter of sanction with or without notice to the Borrower.

### Drawdown Availability

- 7.2.1 When all pre-drawdown conditions set out in the Letter of Sanction have been complied with, then the facilities may be drawn down.
- 7.2.2 Facilities must be availed of within three months from the date of the letter of sanction.
- 7.2.3 The Bank's commitment will be limited to the amount of the facility which has been drawn down at the expiration of the availability period.
- 7.2.4 The Bank may, at its discretion, extend the availability period.
- 7.2.5 Partial drawings will not be permitted on fixed interest rate loans or facilities sanctioned by reference to a Market Related rate of interest.
- 7.2.6 The Bank may at its absolute discretion on the date of a proposed drawdown or utilisation of the whole or any part of any facility refuse such drawdown or utilisation if any of the representations and warranties in clause 7.10 are not true and accurate (in the Bank's opinion) on such date.

### Cancellation

- 7.3 The Bank may at its absolute discretion:
- (i) cancel a facility before it is drawn down or availed of; or
  - (ii) refuse any further drawdown or utilisation of any part of any facility,

if there occurs a material change relevant to the Borrower (or any guarantor for the Borrower) or the facility which is in the Bank's opinion prejudicial to its interests.

### Operation of Accounts

- 7.4.1 The Borrower must ensure that adequate arrangements are in place to meet all payments in respect of facilities, whether of principal, interest or otherwise.
- 7.4.2 The Bank reserves the right to reverse any entry on a Customer's account if any item credited to the account is not paid or if a payment credited to the account is subsequently recalled.

### Joint and Several Liability

- 7.5 Each party to a facility on a joint account is jointly and severally liable to the Bank for repayment of the facility and is subject to all of the applicable terms and conditions.

### Option of Annual Review

- 7.6 All business Borrowers are offered the option of an annual review meeting in relation to all facilities and security. Borrowers should contact their branch to arrange a meeting.

### Facilities Involving Contingent Obligations

- 7.7.1 The offer of facilities by way of bank guarantees, documentary credits, bonds and indemnities and other contingent obligations undertaken by the Bank to third parties will lapse if not availed of within six months from the date of the letter of sanction.
- 7.7.2 Commission in respect of contingent obligations (including bonds, guarantees and indemnities but excluding Undertakings issued under the AIB Trade Finance Terms and Conditions) undertaken by the Bank to third parties on behalf or at the request of the customer will be charged quarterly (or part thereof) in arrears while the obligations continue. The first quarter's commission will be payable three calendar months after the contingent obligation instrument has been issued by the Bank to the third party.
- 7.7.3 (i) Commission is calculated daily on the maximum amount of the contingent obligation, applying the relevant rate of commission divided by 365.

- (ii) Commission will be debited to the Customer's working account or such other account as the Bank deems appropriate.
- (iii) The frequency, method of charging and debiting commission may change, in which case the Bank will give Customers 30 days' notice by writing to them or, as the Bank sees fit, by publication in at least one national newspaper.

- 7.7.4 During the currency of any contingent obligation arrangement made on behalf of a customer, the happening of any of the events set out in Clause 4.2 may lead to the Bank terminating the arrangement with or without notice to the customer.

- 7.7.5 Where, pursuant to any contingent obligation arrangement made with or on behalf of a customer, the Bank is obliged to make payment to a third party or otherwise incur any cost, the amount of such payment or cost will be debited to the working account of the customer or such other account in the name of the customer as the bank deems appropriate (including, where necessary, the opening of a new account by the Bank for that purpose). Any resulting debit balance on such new account will be payable on demand and will constitute an excess balance and will attract interest at the Bank's AA Overdraft rate or such other default interest rate as the Bank may substitute therefore plus surcharge interest, calculated and charged in accordance with Section V.

### Fees, Charges and Expenses

- 7.8.1 The Borrower must pay certain fees, charges and expenses (including VAT, where relevant) in relation to the facilities and these possible fees, charges and expenses are set out below:
- (i) the Borrower must pay any fees and charges that the Bank may charge in relation to any facility, any security and the operation of accounts. These fees and charges are stated in the letter of sanction or set out and/or explained in the current editions of the Bank's booklets "Business Fees and Charges" and "Security Costs for Borrowings" (these booklets are available in any of our branches and/or on our website). Subject to notifying the relevant authority (where required), the Bank may from time to time alter these fees or charges and/or introduce new fees or

charges. The Bank will advertise any changes to fees and charges applicable to the operation of accounts in at least one national newspaper;

- (ii) the Borrower must pay any fees, charges or expenses incurred by the Bank and/or relating to any receiver or other insolvency officer in connection with any facility, security and/or any obligations and liabilities of the Borrower under any facility. These include any fees, charges and expenses for any of the Bank's professional advisors (for example, legal fees and outlay), specialist consultants (for example, valuation fees) and/or for any assessments/examinations considered necessary by the Bank; and
- (iii) the Borrower must pay any fees, charges and expenses charged by any of its own advisers in relation to any facility and/or any item of security.

7.8.2 The Borrower must pay the above fees, charges and expenses whether or not the facilities have been drawn down or utilised in whole or in part.

7.8.3 The Bank may debit the full amount of the above fees, charges and expenses to any account(s) maintained by the Borrower with the Bank and, if necessary, the Bank may open an account in the Borrower's name specifically for this purpose. The Bank may also transfer any such monies to the credit of the Bank or any relevant payee.

## Security

7.9.1 It is the Bank's policy to require security (collateral) where, having regard to the nature and value of the facility being offered, and the circumstances of the Borrower, it considers the provision of security to be reasonable.

7.9.2 Where a facility is expressed in the letter of sanction to be subject to security, the facility will be subject to such security being executed and delivered to the Bank to the Bank's satisfaction before the facility is drawn down or availed of in whole or in part. Any waiver by the Bank of the terms of this clause will be without prejudice to its rights to insist at a later stage to the provision of such security or to take any action as a result of the non-provision of such security.

7.9.3 Before any facility is drawn down or availed of, the Borrower will facilitate an independent valuation(s) of any asset (including without limitation any land and/or buildings) and/or the

Borrower's business if requested to do so by the Bank. Any such valuation(s) will be at the Borrower's own expense and (unless agreed otherwise with the Bank) will be furnished by a valuer chosen from the Bank's approved panel of valuers and addressed to the Bank. The Bank will be entitled to debit any fees or expenses relating to such valuation(s) to the Borrower's working account or any other account which the Bank deems appropriate.

7.9.4 Security will extend to cover all the present and future obligations of the Borrower to the Bank whether in the Borrower's sole name or jointly with another or others, whether as principal or surety and whether actual or contingent.

7.9.5 Security over lands and/or buildings will be accompanied by the Borrower's solicitor's clear report and certificate of good marketable title completed, unamended, in the Bank's standard form.

7.9.6 Security will rank as a first mortgage or charge on the relevant property of the Borrower.

7.9.7 (i) The Borrower must take out and maintain for the period of the facility index linked insurance cover on the Borrower's business and assets (including any property and/or asset the subject of any security for the facilities) for fire and other usual risks for its full reinstatement cost with an insurance company acceptable to the Bank.

(ii) Before the facility is drawn down or availed of, and on request at any time during the period of the facility, the Borrower must produce to the Bank evidence that the insurance cover exists and of payment of any premiums or any other sums.

(iii) The Borrower will ensure (and will produce evidence to the Bank if requested to do so) that the Bank's interest is noted on any of the Borrower's insurance policies relating to any property and/or assets the subject of any security for the facilities, unless the Bank gives the Borrower notice that the Bank wants to be co-insured on any or all such insurance policies. As soon as the Borrower receives any such notice, the Borrower will immediately take all actions required to ensure the Bank is co-insured on such policies.

(iv) The Borrower will ensure that the insurance policies contain any provisions that the Bank may reasonably require to protect itself.

- (v) The Borrower will ensure that all premiums are paid on time and that the Borrower does all other things necessary to ensure these insurance policies remain in force while facilities remain outstanding.
  - (vi) If the Borrower does not do so the Bank may (but without obligation) pay any premium or effect such insurance at the cost of the Borrower and may debit such cost to any account of the Borrower.
  - (vii) The Bank will have no liability to the Borrower if the insurance company does not pay or if the property and/or assets are not insured or are not properly insured for any reason at any time.
- 7.9.8 The Bank does not warrant that the proceeds of realisation of any security and particularly the proceeds of any life policy held as security will be sufficient to clear the entire amount of the facility and any Breakage Cost which may arise.
- 7.9.9 While facilities remain outstanding, the Borrower will not (and will not allow any other party on the Borrower's behalf to), without the Bank's prior written consent, sell, transfer, lease or otherwise dispose of any interest in any property, asset or undertaking of the Borrower which is the subject of any security for the facilities either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily.
- 7.9.10 If the Bank demands repayment of facilities, unless the Borrower pays in full immediately, the Bank may dispose of any property held as security towards payment of the Borrower's liability.
- 7.9.11 If the security includes a guarantee, the Bank must notify the terms of the facility, and any changes in those terms, to the guarantor.
- 7.9.12 The Borrower will be responsible for all fees charged by the Bank for specialist securities services and all solicitors fees and other costs incurred by the Bank in relation to the obtaining, perfection and enforcement of security.
- 7.9.13 The Borrower will also be responsible for all professional fees of the Borrower's solicitor (and, where applicable, the Borrower's spouse's or civil partner's solicitor where that spouse or civil partner is independently advised), including VAT, and all outlays, stamp duties and registration fees payable in relation to the perfection of the security.
- 7.9.14 The Borrower will pay such reasonable charges as may be required by the Bank in relation to the release of any security.
- 7.9.15 If the Borrower avails now or in the future of iBusiness Banking or the Electronic Money Transfer System services from the Bank (or any replacement or similar service(s) offered by the Bank from time to time) and the Bank on any occasion permits a transaction where there are insufficient funds to meet such transaction, then, without prejudice to any other remedies available to the Bank, the security for the facilities will also secure the Borrower's obligation to repay the amount of any such shortfall of funds that were made available by the Bank. The fact that the Bank may permit transactions on one or more occasions where there are insufficient funds, will not oblige the Bank to do so on any subsequent occasion.
- 7.9.16 The Borrower (where such Borrower is a company) agrees to the registration of any charge created or intended to be created by it in the companies registration office.

### **Borrower's Representations and Warranties**

- 7.10 The Borrower represents and warrants in respect of the Borrower and (to the best of the Borrower's knowledge, information and belief having made due and careful enquiries) in respect of each guarantor of the Borrower (if any) and each member of the Group (if any) that:
- (i) all information supplied by the Borrower to the Bank is true, complete and accurate in all material respects and is not or will not be misleading in any respect; and
  - (ii) the Borrower has made full disclosure to the Bank of all information relating to the Borrower, each guarantor of the Borrower (if any) and each member of the Group (if any) and their respective businesses that would be material to or should be made known to any bank that is proposing to lend or has lent money to the Borrower; and
  - (iii) where applicable, it is duly incorporated (or constituted where applicable) and validly existing under the laws of its jurisdiction of incorporation (or establishment where applicable) and it has the power to own its assets and carry on its business as it is being conducted; and

- (iv) where applicable, he/she is of full age and is not by reason of illness or incapacity (whether mental or physical), incapable of managing his/her own affairs and he/she has not become or been declared to be of unsound mind or become a ward of court; and
  - (v) he/she/it has the power to enter into, perform and deliver (and has taken all necessary action required to authorise his/her/its entry into, performance and delivery of) the letter of sanction and all security for the facilities to which he/she/it is or will be a party and the transactions contemplated by those documents; and
  - (vi) the obligations expressed to be assumed by him/her/it in the letter of sanction and all security for the facilities to which he/she/it is or will be a party are legal, valid, binding and enforceable obligations and do not and will not conflict with:
    - (a) any law or regulation applicable to him/her/it and/or any of his/her/its assets;
    - (b) any agreement or instrument binding upon him/her/it or affecting any of his/her/its assets; and
    - (c) its constitutional documents (where applicable); and
  - (vii) he/she/it is in compliance with all applicable laws, regulations and practices and he/she/it holds and will keep in full force and effect and will comply with all authorisations, consents, approvals, waivers, resolutions, licences, permits, exemptions or registrations to ensure the letter of sanction and all security for the facilities to which he/she/it is a party or will be party is legal, valid, binding and enforceable and to enable him/her/it to validly perform his/her/its obligations thereunder; and
  - (viii) he/she/it has not breached any term or condition applicable to any facility and is not in breach of or in default under any agreement or document to which he/she/it is a party or by which he/she/it or any part of his/her/its assets may be bound which could have a material adverse impact on him/her/it or on his/her/its ability to perform his/her/its obligations under the letter of sanction or any security for the facilities to which he/she/it is a party or will be party; and
  - (ix) he/she/it is the legal and beneficial owner of the relevant assets that are subject to the security and the assets are held by him/her/it free from any security interest (such as a mortgage, charge, pledge, lien, assignment or other security interest securing any obligation of any person, any title retention, preferential right, trust arrangement or other security agreement or arrangement having a similar effect), other than those notified to the Bank; and
  - (x) no litigation, arbitration or other proceedings have been started or threatened against him/her/it which could have a material adverse impact on him/her/it or on his/her/its ability to perform his/her/its obligations under the letter of sanction or any security for the facilities to which he/she/it is a party or will be party; and
  - (xi) his/her/its centre of main interests (as the term is used in Article 3(1) of the Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings) is situated in Ireland and he/she/it has no establishment (as that term is used in such regulation) in any other jurisdiction, unless he/she/it has notified the Bank otherwise in writing; and
  - (xii) he/she/it has been advised to take, and has been given full opportunity to take, independent legal advice on the letter of sanction and the actual and potential consequences of his/her/its execution of the letter of sanction, all security for the facilities and any other document specified in or contemplated by the letter of sanction to which he/she/it is or will be a party, including the terms and conditions set out in this booklet.
- These representations and warranties will be deemed to be repeated by the Borrower on the date of each drawdown or utilisation of any facility and on each day thereafter, by reference to the facts and circumstances existing on such date.
- Borrower's Covenants, Compliance and Indemnity**
- 7.11 The Borrower covenants and agrees with and undertakes to the Bank that, for as long as any facility is available for utilisation or any amount is outstanding to the Bank in respect of any facility:
- (i) the Borrower will not, without the prior



- consent in writing of the bank, create or agree to create or permit any mortgage, charge or other encumbrance of any nature over any of the assets or property of the Borrower; and
- (ii) the Borrower, being a company, shall not alter its constitution, or being the trustee of a trust, will not alter the trust deed or constitution in a manner prejudicial to the Bank; and
  - (iii) the Borrower will pay promptly all creditors who would rank as preferential creditors in the event of an insolvency of the Borrower or upon the appointment of a receiver over any property of a company Borrower; and
  - (iv) the Borrower will promptly deliver to the Bank such up to date financial and other information in relation to the Borrower's business as the Bank may from time to time require; and
  - (v) the Borrower will arrange for annual accounts for the Borrower's business to be prepared, properly audited (or, if applicable, properly certified by an independent accountant) and sent to the Bank;
  - (vi) the facility will be used for the purpose set out in the letter of sanction; and
  - (vii) the Borrower will comply with all applicable laws relating to the business and property of the Borrower including, without limitation, laws relating to the health, safety, pollution or protection of the environment and the terms of any licence or other authorisation issued in connection therewith by any relevant authority; and
  - (viii) the Borrower will obtain and maintain at the Borrower's expense all licences and authorisations required under any applicable law relating to the business and property of the Borrower and the Borrower will produce such licences or authorisations to the Bank on request; and
  - (ix) the Borrower will indemnify the bank and keep the Bank at all times indemnified against any and all actions, costs, demands, claims, losses or damage which the Bank may suffer or be put to by reason of any breach or non-observance by the Borrower of any such applicable laws or the terms of any such licences or other authorisations; and
- (x) the Borrower will carry on the Borrower's business in a proper and efficient manner; and
  - (xi) the Borrower will not (and will not allow any other party on the Borrower's behalf to) sell, transfer or lease the whole of or any part of the Borrower's present or future material assets or otherwise dispose of the whole of or any part of any such asset either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily without the Bank's prior written consent; and
  - (xii) the Borrower will not make any significant change to the nature, constitution or management of the Borrower's business and will not enter into any transaction with any person other than on arm's length commercial terms in the ordinary course of the Borrower's business; and
  - (xiii) there will be no change of control of the Borrower for the duration of the facilities without the Bank's prior written consent. In this regard, "change of control" means any change in direct or indirect ownership of the Borrower, any change in the power to control the composition or the majority of the board of directors of the Borrower and/or any person(s) (including any bodies corporate) gaining the power to direct the management and policies of the Borrower whether through ownership of shares, by contract or otherwise; and
  - (xiv) the Borrower will not enter into any joint venture, partnership or similar arrangement with any other person or make any significant acquisitions without the Bank's prior written consent; and
  - (xv) the Borrower will promptly inform the Bank of:
    - (i) any material litigation, arbitration or other proceedings pending or threatened against the Borrower or any guarantor which could have a material adverse impact on the Borrower or any guarantor or on their ability to perform their respective obligations under the letter of sanction or any security for the facilities to which the Borrower is a party or will be party; and
    - (ii) any final letters of demand for payment received by the Borrower from any creditor, immediately upon becoming aware of it; and

- (xvi) the Borrower will promptly inform the Bank if a breach occurs of any of the terms and conditions applicable to any facility; and
- (xvii) the Borrower will facilitate an independent valuation(s) of any asset (including without limitation any land and/or buildings) and/or the Borrower's business if requested to do so by the Bank at any time. Any such valuation(s) will be at the Borrower's own expense and (unless agreed otherwise with the Bank) will be furnished by a valuer chosen from the Bank's approved panel of valuers and addressed to the Bank. The Bank will be entitled to debit any fees or expenses relating to such valuation(s) to the Borrower's working account or any other account which the Bank deems appropriate; and
- (xviii) the Borrower will promptly do all such acts or execute all such documents as the Bank may reasonably specify (and in such form as the Bank may require in favour of the Bank or its nominee(s)):
  - (a) to perfect the security (which may include the execution of a mortgage, charge, assignment, pledge, lien, encumbrance or other security interest over all or any of the assets which are, or are intended to be, the subject of the letter of sanction); and
  - (b) for the exercise of any rights, powers and remedies of the Bank provided by or pursuant to the letter of sanction, the terms and conditions set out in this booklet, the security for the facilities or by operation of law.

### **Bank's Certificate Binding**

- 7.12 A certificate issued by any officer of the Bank as to any amount payable in respect of facilities will be final and binding on the Borrower save in the case of manifest error.

### **Breach and Variation**

- 7.13 The Borrower and each guarantor (if any) agree and acknowledge that each of the terms and conditions applicable to a facility are for the benefit of the Bank and may be waived by the Bank at its absolute discretion without the consent of the Borrower or any guarantor. Any waiver by the Bank of any of the terms or conditions applicable to a facility will not constitute a general

waiver of such term or condition. No failure or delay by the Bank in exercising any right, power or privilege granted to it will operate as a waiver thereof and no single or partial exercise of any such right, power or privilege will prevent the Bank from later exercising any such right, power or privilege. The rights and remedies provided for in the letter of sanction and this booklet are cumulative and not exclusive of any rights or remedies provided by law.

### **Full Payment**

- 7.14 All sums payable by the Borrower in respect of facilities (whether of principal, interest or otherwise) will be paid in the currency in which they are outstanding in full without any deduction, set-off, counterclaim or withholding whatsoever. In the event of the Borrower being required by law to make any deduction or withholding from any payment to the Bank then:
- (i) the Borrower will ensure that such deduction or withholding will not exceed the minimum legal liability thereof; and
  - (ii) the Borrower will pay to the Bank such additional amounts as will result in the receipt by the Bank of a net amount equal to the amount it would have received had no such deduction or withholding been required to be made.

### **Exchange Loss**

- 7.15 In relation to foreign currency facilities, the Bank will not be liable for any loss or expense incurred by the Borrower:
- (i) as a result of the Bank's inability to determine the rate of interest on the facility prior to drawdown; and/or
  - (ii) in respect of the cost of obtaining foreign currency to meet any payment when due.

### **Business Days**

- 7.16 A "business day" means a day on which the Bank's branches are generally open for business in Ireland. Any payment which would be due and payable on a non-business day, or on the 29th, 30th or 31st day of a calendar month which does not include that date, will be deemed due and payable on the nearest business day which the Bank deems appropriate.

## No Assignment by Borrower

- 7.17 The benefit of each facility is personal to the Borrower and will not be capable of assignment by the Borrower in whole or in part.

## Assignment by the Bank

- 7.18 The Bank reserves the right to assign, charge, transfer (by way of novation, securitisation or otherwise) or sub-participate all or part of any facilities and any security held as collateral in respect of the facilities to any member of the Allied Irish Banks Group or to any third party, either within the State or elsewhere, without notice to or the prior consent of the Borrower.

The Borrower irrevocably consents and agrees that the Bank will be entitled to give any proposed assignee, chargee, transferee or sub-participant, and its and their professional advisors, such information as the Bank deems necessary relating to the Borrower, the facility and the security.

The Borrower agrees to execute, at the cost of the Bank, any documentation (including without prejudice to the generality of the foregoing, any deed of novation) which the Bank requests it to execute in connection with any such assignment, transfer, sub-participation or securitisation and in consideration of the facilities and as security therefore, the Borrower irrevocably appoints the Bank to be its attorney for the purpose of the execution of any such documentation.

## Reference of Debts on Default

- 7.19 On default by the Borrower the bank reserves the right to refer the outstanding debt in relation to facilities to another organisation or debt-collection agency for the purpose of collection of payment and to give such organisation or agency such information as it deems necessary relating to the Borrower and any facility.

## Disclosure within AIB Group

- 7.20 The Bank may disclose information about the Borrower and any facility to any of the companies in the Allied Irish Banks Group.

## Severability

- 7.21 In case any one or more of the terms and conditions relating to a facility should be invalid, illegal or unenforceable in any respect under any

law the validity, legality or enforceability of the remaining provisions will not in any way be affected or impaired thereby.

## Notice

- 7.22 Any notice, demand, request or other communication in relation to a facility may be delivered as follows:
- (i) by hand or by ordinary pre-paid post to the Borrower at the address of the Borrower last known to the Bank or to the Bank at the branch or business area of the Bank at which the facility is domiciled; or
  - (ii) by fax to a fax number provided for that purpose by the Borrower to the Bank or by the Bank to the Borrower; or
  - (iii) by any electronic system used by both the Borrower and the Bank from time to time and capable of delivering and receiving such communication by use of access codes provided by the Borrower to the Bank or by the Bank to the Borrower.

Such communication will be deemed to have been validly given or made when delivered by hand or twenty-four hours after dispatch by post, fax or other electronic system.

## Force Majeure

- 7.23 The Bank will not be liable if it cannot perform any of its obligations because of industrial disputes or other events it cannot control.

## Applicable Law

- 7.24 Facilities will be governed and construed in accordance with the laws of Ireland.

## Set-Off

- 7.25 The Bank may, in addition to any other similar right it may have, at any time, without notice to the Borrower, set-off any credit balance on any account of the Borrower with the Bank against any sums which are or may become owing to the Bank by the Borrower in any manner or on any account whatsoever.

## Conflicts of Interest

- 7.26 It is an unavoidable feature of the Bank's business that a conflict of interest may arise in any transaction, whether due to an interest of the Bank in the transaction or an interest of more than one customer in the transaction, or some

other circumstance affecting the transaction. By accepting any facility, the Borrower acknowledges the general nature of such conflict and that the Borrower still wishes to proceed with the transaction. Details of the Bank's policy on conflicts of interest are available from all branches and in the Terms of Business at [www.aib.ie](http://www.aib.ie)

## Liquidity Costs

- 7.27 If the cost to the Bank of making or maintaining a facility increases as a result of the introduction of or change in any liquidity, reserve ratio, special deposit or similar requirements (or any other requirement having the same or similar purpose) of any Regulatory Authority or from any change in any law or regulation or the introduction of or increase in any tax, the Bank will either demand payment of an amount or increase the interest rate applicable to the facility by an amount that the Bank will conclusively determine (at its absolute discretion) is sufficient to compensate the Bank for such increased cost.

## Guarantor Execution

- 7.28 The Borrower and each guarantor of the Borrower acknowledge and agree that the Borrower's liability to the Bank under any relevant letter of sanction and the security for the facilities and under any and all guarantees, indemnities, covenants, undertakings and other instruments now or at any time held by the Bank will be unaffected by the non-execution of the letter of sanction by any or all of the guarantors of the Borrower.

## Entire Agreement

- 7.29 The letter of sanction issued by the Bank, together with the terms and conditions set out in this booklet constitute the entire understanding between the parties as regards the relevant facilities and subject to the terms of the letter of sanction, supercede any arrangements, understandings, promises or agreements (whether written or otherwise) made or existing between the parties prior to the signing of the letter of sanction.

## Counterparts

- 7.30 The letter of sanction may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when executed and delivered will constitute an original and all such counterparts together will constitute one and the same instrument.

## Notes

This image shows a vertical rectangular sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are approximately 20 lines visible. The paper has a slightly textured appearance and is set against a dark background.

Terms and conditions apply.

Allied Irish Banks, p.l.c. is regulated by the Central Bank of Ireland.

**If you have any questions, just ask.**

