

(2)DBJNH051202

EXPORT CREDIT EXCHANGE (PROPRIETARY) LIMITED

TERMS AND CONDITIONS OF PARTICIPATION IN SPOT MARKET SERVICE



Attorneys Notaries & Conveyancers
1st Floor, Block A, Southern Life Gardens
Newton Park, Port Elizabeth

Tel : 041 363 6044
Fax : 041 363 6046
E-mail: law@e-ex.co.za

1. INTERPRETATION

In these Terms and Conditions, unless inconsistent with or otherwise indicated by the context, the following expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings.

2. DEFINITIONS

- 2.1. "APDP" means the Automotive Production and Development Programme introduced by the South African Government as per Government Gazette No. 35464 dated 9 June 2012;
- 2.2. "brokerage" means the commission payable by a seller and buyer to ECE at the rate advised by ECE from time to time when an IRCC or PRCC sale transaction is completed on the service ;
- 2.3. "buyer" means an intending registered buyer of an IRCC or PRCC ;
- 2.4. "ECE" means Export Credit Exchange (Proprietary) Limited, a company duly incorporated in accordance with the company laws of South Africa, which is the provider of the service ;
- 2.5. "face value" means the import value indicated on an IRCC(s) or PRCC(s) ;
- 2.6. "IRCC" means an Import Rebate Credit Certificate issued by ITAC in terms of the MIDP, or a pending application to ITAC for such a certificate ;
- 2.7. "ITAC" means the International Trade Administration Commission or its assigns ;
- 2.8. "list" means to enter details of a spot offer to sell or a spot bid to buy an IRCC or PRCC on the service;
- 2.9. "MIDP" means the Motor Industry Development Programme introduced by the South African Government on 1 September 1995;
- 2.10. "PRCC" means a Production Rebate Credit Certificate issued by ITAC in terms of the APDP, or a pending application to ITAC for such a certificate ;

- 2.11. "spot bid" means a spot bid (listed by a buyer in accordance with these Terms and Conditions), to purchase an IRCC(s) or PRCC(s), for which an audit report has already been issued ;
- 2.12. "spot offer " means a spot offer (listed by a seller in accordance with these Terms and Conditions), to sell an IRCC(s) or PRCC(s) for which an audit report has already been issued ;
- 2.13. "the products" means eligible products as defined and regulated by ITAC ;
- 2.14. "a quarter" means any one of the four quarters of a calendar year the first quarter being the period 1 January to 31 March ;
- 2.15. "seller" means an intending registered seller of an IRCC or PRCC ;
- 2.16. "service" means the service offered by ECE, namely providing a website venue in terms of which a spot offer to sell or a spot bid to buy an IRCC(s) or PRCC(s) during the course of a particular quarter ;
- 2.17. "spot contract" means an agreement of sale concluded, in accordance with these Terms and Conditions, between a buyer and a seller ;
- 2.18. "spot market" means the trading of an IRCC(s) or PRCC(s) in accordance with these Terms and Conditions, on the service.
- 2.19. "Qualifying Imports" means New and unused specified right hand drive motorcars (including station wagons), minibuses and specified light goods vehicles (as defined in Note 5.1 to rebate item 317.03); New and unused automotive components for all of the vehicles above and automotive components imported against PRCCs as listed in rebate item 460.17, for the replacement and service market or used as original equipment components in the manufacture of specified motor vehicles.

3. PREAMBLE

- 3.1. On 1 September 1995, the South African Government introduced the MIDP to regulate the motor industry in South Africa to achieve stated objectives, one of which is the promotion of exports through the ability to earn IRCC(s).
- 3.2. The MIDP has established a system of issuing IRCC(s) to exporters and manufacturers of the products, provided that they are registered with and have received a permit from ITAC.

- 3.3. The MIDP will relate to exports which take place until the 31 December 2012 subsequently the APDP will come into effect.
- 3.4. Per Government Gazette no. 35464 dated 29 June 2012, the South African Government introduced the APDP to regulate the motor industry in South Africa to achieve stated objectives, one of which is the promotion of value addition through the ability to earn PRCC(s).
- 3.5. The APDP has established a system of issuing PRCC(s) to qualifying manufacturers of the products, provided that they are registered with and have received a permit from ITAC.
- 3.6. An IRCC or PRCC entitles the holder to a rebate of import duty payable on the importation of qualifying imports to the extent indicated in an IRCC or PRCC or an IRCC or PRCC allows the holder to claim a refund of import duty in respect of qualifying imports to the extent indicated on the IRCC or PRCC subject to certain exceptions.
- 3.7. ITAC will allow an IRCC or PRCC to be issued to a beneficiary and be transferred to a 2nd beneficiary and once transferred will not permit such IRCC or PRCC to be transferred again.
- 3.8. ECE provides a service whereby sellers and buyers interact anonymously with a view to :-
 - 3.8.1. sellers being able to offer, subject to these Terms and Conditions, IRCC(s) or PRCC(s) for sale to buyers ;
 - 3.8.2. buyers being able to bid, in accordance with these Terms and Conditions, for the purchase of IRCC(s) or PRCC(s).
- 3.9. ECE will facilitate both sellers and buyers entering their spot offers and spot bids on the service which once matched, would allow the seller and buyer to conclude a spot contract.

4. REGISTRATION

- 4.1. Parties wishing to participate in the service must register with ECE
- 4.2. Applications for registration may be made online on the internet website of the service, the address being www.ece.co.za.
- 4.3. ECE may :-
 - 4.3.1. in its absolute discretion accept or decline an application for registration; and/
 - 4.3.2. forthwith cancel the registration of a seller or buyer if such party breaches these Terms and Conditions.

- 4.4. The registers of sellers and buyers will not be available for inspection and will not be disclosed to any person, save and except for the following circumstances :-
- 4.4.1. in the case of the sellers' register, with the consent of all the sellers; or
 - 4.4.2. in the case of the buyers' register, with the consent of all the buyers; or
 - 4.4.3. if required by law to do so; or
 - 4.4.4. the contents of the sellers' register or the buyers' register, as the case may be, is generally available to the public; or
 - 4.4.5. to such party employed by or acting on behalf of ECE whose province it is to know the contents of same; or
 - 4.4.6. in connection with any legal proceedings in which ECE is involved; or
 - 4.4.7. in the event of there being any default or breach by a seller or buyer of these Terms and Conditions.
- 4.5. any party wishing to participate in the service and registering with ECE, agrees as a result of such registration to be bound by these Terms and Conditions when participating in the service.
- 4.6. A seller or buyer may at any time, except where such party has listed a spot offer to sell or a spot bid to buy on the service, as the case may be, cancel in writing its registration, in which event ECE will remove its name from the applicable register.
- 4.7. A seller or buyer whose registration is cancelled may not participate in the service until registration is renewed.
- 4.8. Registration will be suspended after 1 (one) year of inactivity.

5. SPOT OFFER TO SELL

- 5.1. A seller may list on the service a spot offer to sell an IRCC or PRCC and the terms of such spot offer on the service, provided that :-
- 5.1.1. he is the first holder of such IRCC or PRCC; or

- 5.1.2. in the case of a pending application for an IRCC or PRCC with ITAC, such seller shall furnish an external audit certificate to the satisfaction of ECE to the effect that such claim is valid and will eventually be granted by ITAC.
- 5.2. Upon the listing of such a spot offer by a seller, or prior thereto, a seller may extract spot bids, as contemplated in clause 6 below, and in the event of the seller accepting such a spot bid and confirming acceptance, a spot contract shall be concluded between such buyer and seller and the seller shall be obliged to sell the IRCC(s) or PRCC(s) concerned to such buyer, who will be obliged to buy same.
- 5.3. Once a spot offer to sell has been listed on the service, it becomes irrevocable until such time as it is changed, withdrawn or until a stipulated expiry date is reached.
- 5.4. Upon the seller accepting and confirming a spot bid, such seller shall become liable to pay to ECE the brokerage which shall be paid as a first charge out of the purchase price; provided that in the event of the seller defaulting in any of its obligations in terms hereof, such brokerage shall become payable by the seller to ECE immediately.
- 5.5. Within twenty-four (24) hours of placing a spot offer to sell, the seller shall e-mail or fax ECE documentary proof to substantiate the details of the IRCC or PRCC so listed. In the case of a pending application for a new IRCC or PRCC, such documentary proof shall include an external audit certificate to the satisfaction of ECE.
- 5.6. A seller listing a spot offer to sell an IRCC or PRCC hereby unconditionally warrants :-
 - 5.6.1. that such IRCC(s) or PRCC(s) is valid in every respect; and
 - 5.6.2. in the case of a pending application for an IRCC or PRCC, that such IRCC or PRCC will be approved and issued by ITAC at the face value of the IRCC or PRCC so listed ; and
 - 5.6.3. that the party listing has the necessary authority to do so on behalf of the seller; and
 - 5.6.4. that such IRCC or PRCC is freely transferable to the buyer and that the seller is the first holder thereof.
- 5.7. ECE reserves the right, at its absolute discretion, to cancel and de-list any spot offer to sell :-
 - 5.7.1. if there is any breach of these Terms and Conditions by the seller or any breach of a previous spot offer to sell which has not been remedied or was not remedied

to the satisfaction of ECE; or

- 5.7.2. the documentary evidence specified in clause 5.5 is not received within a period of twenty-four (24) hours.

6. SPOT BID

- 6.1. A Buyer may list a spot bid on the service by entering the details of such spot bid
- 6.2. Once a buyer has listed his spot bid, or prior thereto, a buyer may extract from the system spot offers to sell and in the event of the buyer accepting and confirming a spot offer to sell, a spot contract shall be concluded between such buyer and seller and the buyer shall be obliged to buy the IRCC or PRCC concerned from such seller, who will be obliged to sell same. In the event of the buyer defaulting in any of its obligations in terms hereof, it shall, notwithstanding any other remedies which a seller or ECE may have, forthwith pay to ECE the brokerage.
- 6.3. A spot bid shall, upon listing, become irrevocable until such time as it is changed, withdrawn, stipulated expiry date is reached or one year post listing.
- 6.4. ECE reserves the right, at its absolute discretion, to cancel and de-list any offer to buy if there is any breach of these Terms and Conditions by the buyer or any breach of a previous offer to buy which has not been remedied or was not remedied to the satisfaction of ECE

7. DELIVERY

Upon a spot contract having been concluded on the service :-

- 7.1. the seller undertakes, when called upon to do so by ECE, to sign whatever transfer documentation may be necessary to transfer the IRCC(s) or PRCC(s) to ECE and/or the buyer thereof ;
- 7.2. the buyer undertakes to pay to ECE the purchase price thereof, when called upon to do so by ECE; provided that ECE may not call upon a buyer to pay the purchase price until such time as ITAC have notified ECE :-
- 7.2.1. in the case of an existing PRCC or IRCC, that it is available for transfer into the name of the buyer thereof or ECE; or
- 7.2.2. in the case of a pending application for an IRCC or PRCC, ITAC is ready to issue such IRCC or PRCC and transfer same into the name of the buyer and/or ECE.

7.3. ECE undertakes to :-

- 7.3.1. facilitate, on behalf of the seller, delivery of the IRCC or PRCC to the buyer upon payment of the purchase price by the buyer to ECE; and
- 7.3.2. to facilitate, on behalf of the buyer, payment to the seller of the purchase price after deduction of the brokerage which the seller hereby authorises ECE to deduct from the purchase price.

7.4. ECE shall disclose to a seller upon the conclusion of a spot contract on the service :-

- 7.4.1. the spot offer to sell reference number ;
- 7.4.2. the spot contract reference number
- 7.4.3. the transaction date ;
- 7.4.4. the expected issue date of the IRCC or PRCC by ITAC ;
- 7.4.5. the expected payment date when payment will be made to the seller ;
- 7.4.6. the IRCC or PRCC face value so purchased by a buyer ;
- 7.4.7. the purchase price ;
- 7.4.8. the Value-Added Tax ;
- 7.4.9. the brokerage ;
- 7.4.10. the Value-Added Tax on the brokerage ;
- 7.4.11. the total due to the seller.

7.5. ECE shall disclose to a buyer upon the conclusion of a spot contract on the service :-

- 7.5.1. the spot bid reference ;
- 7.5.2. the spot contract reference number
- 7.5.3. the transaction reference number ;

- 7.5.4. the transaction date ;
- 7.5.5. the expected issue date of the IRCC or PRCC by ITAC ;
- 7.5.6. the IRCC or PRCC face value so purchased by a buyer ;
- 7.5.7. the purchase price ;
- 7.5.8. the Value-Added Tax ;
- 7.5.9. the brokerage ;
- 7.5.10. the Value-Added Tax on the brokerage ;
- 7.5.11. the total due to the sellerECE.

7.6. The information to be disclosed by ECE as dealt with above will be provided by e-mail.

7.7. The service utilises the principle of "first come, first served" to match spot offers to sell and spot bids to buy. A seller or buyer extracts spot offers to sell or spot bids to buy from the service and clicks the "accept" button against which the spot offer or spot bid will be reserved by the service until such time as confirmation is given. Confirmation results in the conclusion of a spot contract and removes the completed transaction from the service, save in the case of a spot offer or spot bid being partially fulfilled, in which event such transactions will be withdrawn *pro tanto*.

8. LIMITATION

- 8.1. ECE is not involved in any transaction between a seller and buyer and these risks will be assumed by the sellers and buyers themselves. ECE provides the service only and cannot and does not control the behaviour of participants utilising the service.
- 8.2. If there is any dispute between the participants of the service, ECE is under no obligation to become involved and sellers and buyers hereby release ECE, their officers, employees, agents and successors in rights from claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way relating to such disputes.
- 8.3. Participants in the service agree that the use of the service is at their sole risk. This service is provided on an "as is" basis and ECE expressly disclaims all warranties of any kind, whether express or implied.

- 8.4. ECE makes no warranty that the service will meet the participants' requirements that the service will be uninterrupted, timely, secure or error free.
- 8.5. The participants agree that ECE shall not be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or inability to use the system.

9. WARRANTIES

- 9.1. the Seller warrants and represents to the buyer that:
- 9.1.1. any and all information provided by the seller or to be provided by the seller, and any and all documentation prepared by the seller or to be prepared by the seller for submission or utilisation in any application or request for the issue of the IRCC's or PRCC's or in respect of any claims or the utilisation of the IRCC's or PRCC's in terms of the Act, pursuant to these terms and conditions, are or shall be (as the case may be) accurate, valid and legal in all respects; and
- 9.1.2. it lawfully obtained the IRCC's or PRCC's pursuant to the products.
- 9.1.3. the seller acknowledges that the buyer may be penalised or suffer loss or damages should such information or documentation prove to be incorrect.

10. INDEMNITY

- 10.1. Seller indemnifies buyer and holds it harmless against all loss, liability (whether actual, uncertain, contingent or otherwise), damage or expense which buyer may suffer as a result of or which may be attributable to any breach by seller of any of the warranties or representations given in terms of clause 9.
- 10.2. In addition to the indemnity given in terms of 10.1 above, should at anytime during or after the expiry of this Agreement –
- 10.2.1. any fines, penalties or interest being levied in respect of an IRCC or PRCC sold to buyer in terms of this Agreement, whether owing to any deficiency (material or otherwise) in the IRCC or PRCC or for any other reason whatsoever, other than due to buyer's, its nominee's or transferee's own negligence, then in such event seller shall immediately upon written demand by buyer, reimburse buyer in the full amount thereof, including any interest levied thereon; or
- 10.2.2. Considering the warranty or representation given by seller in terms of clause 9, if the whole or part of an IRCC or PRCC sold to buyer in terms of this Agreement be repudiated, rejected or withdrawn, whether owing to any deficiency (material or otherwise) in the IRCC or PRCC or for any other reason whatsoever, other than

due to buyer's its nominee's or transferee's own negligence, then seller shall immediately upon written demand by buyer, refund to buyer the purchase price paid by the buyer for that IRCC or PRCC or that part of the purchase price proportional to the amount of the rebate which is revoked or withdrawn. the warranty or representation given by seller in terms of clause 9, or the whole or part of an IRCC or PRCC sold to buyer in terms of this Agreement be repudiated, rejected or withdrawn, whether owing to any deficiency (material or otherwise) in the IRCC or PRCC or for any other reason whatsoever, other than due to buyer's, its nominee's or transferee's own negligence, then in such event seller shall immediately upon written demand by buyer, refund to buyer the purchase price paid by buyer for that IRCC or PRCC or that part of the purchase price proportional to the amount of the rebate which is revoked or withdrawn.

- 10.3. The indemnities contained in this clause 10 shall not be limited by time and is fully transferable to subsequent holders of an IRCC or PRCC sold to buyer in terms of this agreement, without notice to seller.
- 10.4. Save as expressly provided otherwise elsewhere in this Agreement, neither party shall be liable to the other in respect of any indirect or consequential damages or loss of profits suffered as a result of any breach of this Agreement.

11. COMPLIANCE WITH SECTION 43(1) OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT OF 2002

In compliance with Section 43(1) of the Electronic Communications and Transactions Act (the ECT Act) please note the following :-

- 11.1. Full name - Export Credit Exchange (Proprietary) Limited.
- 11.2. Physical address – 56 Mangold Street, Newton Park, Port Elizabeth
- 11.3. Telephone number - (041) 3910600.
- 11.4. Web site address - <https://www.ece.co.za>.
- 11.5. Registration number and names of office bearers in case of registration
- 11.5.1. 1998/020737/07
- 11.5.2. Allan Corbett
- 11.6. Physical address for receipt of service – 56 Mangold Street, Newton Park, Port Elizabeth

12. VARIATION OF THE TERMS AND CONDITIONS

ECE may from time to time, by not less than five (5) days notice from a seller or a buyer, vary these Terms and Conditions.

13. NOTICES

13.1. Any notice or communication to be given by ECE in connection with these guidelines :-

13.1.1. may be given by a director or employee of ECE; and

13.1.2. must be in writing; and

13.1.3. must be left at the address of the addressee or sent by pre-paid ordinary or registered post to the address of the addressee or sent by facsimile to the facsimile number of the addressee last notified by the addressee to ECE, or by e-mail to the e-mail address of the addressee last notified by the addressee to ECE.

13.2. Unless a later time is specified in it a notice or other communication takes effect from the time it is received.

13.3. A letter, facsimile or e-mail is taken to be received :-

13.3.1. in the case of a posted letter, on the third day after the date of posting; and

13.3.2. in the case of a registered letter, on the third day after the date of sending; and

13.3.3. in the case of a facsimile, on production of a transmission report by the machine from which facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient last notified to ECE; and

13.3.4. in the case of e-mail, at the time it was sent.

14. GOVERNING LAW

14.1. These Terms and Conditions shall be governed by and interpreted according to the laws of the Republic of South Africa without reference to the choice of law provisions of the Republic of South Africa. In the event of a conflict between or inconsistency in the law applicable to the various Provinces of the Republic of South Africa, the law as applied and interpreted in the Eastern Cape shall prevail.

- 14.2. The parties irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, South Eastern Cape Local Division, in respect of any action or proceeding arising from these Terms and Conditions.