



Uniform Rules for Transferable Electronic Payment Obligations (URTEPO)

Version 1.0

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Foreword

The digitalisation of trade finance is being made possible by new and still-to-emerge technologies. This has multiple aspects, from improving operational efficiency to increasing the supply of finance available to trading parties. Underlying all of trade finance, however, is a simple and timeless requirement: the need to secure payment for goods and services. Over the course of centuries, bankers and forfaiters developed robust legal and commercial mechanisms and instruments to achieve this. Negotiable instruments such as bills of exchange and promissory notes provided a globally recognised framework for the creation of unconditional payment obligations.

In 2013, ITFA and the ICC published the Uniform Rules for Forfaiting (URF 800), a set of rules designed to better regulate the primary and secondary markets in such transactions. Digitalisation, and accompanying changes in the law, are now offering new ways to both create, or re-create, these traditional instruments in digital form as well as use new ways to transfer these. ITFA has therefore taken the decision to publish these new rules covering the transfer of electronic payment obligations that can be used to support the financing of international trade.

The rules are designed to be technology neutral and to be consistent with the principles underlying much of the new breed of legislative innovation in this area, such as UNCITRAL's Model Law on Electronic Transferable Records and the UK's Electronic Trade Documents Bill (expected, at the time of writing, to be passed and become law in early 2023).

Users of the rules should take note they specifically cover the transfer of an electronic payment obligation that is already in existence in electronic form. They do not detail the technical requirements for the creation of the payment obligation itself beyond providing that the seller is responsible for ensuring it is valid. The legislation referred to above requires the existence of a reliable system, not just to achieve a transfer, but to prove the validity of the underlying instrument itself. The rules do not specify what constitutes a reliable system. Practitioners will need to refer to other industry practice, legal and regulatory guidance and the applicable law of the transfer when determining these matters.

When examining transaction documentation submitted by a seller (whether in paper or electronic form), the rules provide that the examination must be in accordance with market practice. This follows the standard laid down by the URF 800 and reflects the fact that a commercial market will come into existence for electronic payment obligations in the same way as it has for paper payment obligations. Rules such as URTEPO do not, and cannot, expressly include all possible standards and practices many of which do not yet exist but do require that they are taken into account when they come into being. ITFA will keep an overwatch of these developing standards and practices and will, where requested, be prepared to arbitrate any dispute as to their observance.

We expect that payment obligations will come into existence in a variety of forms (some digital equivalents of existing instruments, others completely new and innovative) and be transferred through the operation of a number of platforms and operating systems. Some will require rulebooks and others will simply need compatible software across users. This will be a dynamic area for years to come.

The rules refer to data-matching. This concept applies principally to electronic records where it is anticipated that automated systems will be developed to handle this process quickly and efficiently. Much innovation is expected in this area as well.

Note that both the URTEPO and URF 800 will co-exist, the former catering for fully or partially electronic transactions, whereas the latter contemplates traditional paper-based transactions.

It goes without saying that these rules would not have come about without the dedication of the members of the ITFA working group that have regularly convened and debated the wording and have ultimately been able to draft a set of rules fit for the future. ITFA and our industry owe them a debt of gratitude.

Paul Coles

ITFA Board Member and Chair of the ITFA Market Practice Committee

1. Application

- a. The URTEPO are the Uniform Rules for Transferable Electronic Payment Obligations and apply to the Transfer of a Transferable Electronic Payment Obligation (**TEPO**) when the terms and conditions of the Transfer Agreement for the relevant TEPO expressly state that it is subject to these rules.
- b. When the Transfer of a TEPO is subject to these rules, the URTEPO are binding on each of the Parties unless and to the extent expressly modified or excluded by the terms and conditions of the Transfer Agreement for the relevant TEPO.
- c. This version is Version 1.0. If the terms and conditions of the Transfer Agreement for a TEPO do not indicate the applicable version of the URTEPO, it will be subject to the latest version in effect on the date of the Transfer Agreement for such TEPO.
- d. The URTEPO are separate from and do not modify the rules set out in the Uniform Rules for Forfeiting, (ICC Publications no.800).

2. Definitions

Addressee means the Party that has Received or is granted access to Transaction Documentation by the Submitter;

Availability Date means the last day on which the Seller must deliver satisfactory Transaction Documentation and satisfy any other Condition. If the Availability Date is described in the relevant Transfer Agreement as 'immediately available' or similar terms, that means, for Electronic Records, the day falling 2 Business Days and, for Paper Documents, the day falling 5 Business Days, in each case after the Trade Date;

Beneficiary means the Buyer that has acquired the rights and benefits of a TEPO, as a transferee;

Business Day means, a day on which a party or person is regularly open for business at the place at which an act subject to these rules is to be performed by such party or person;

Buyer means the party that purchases the TEPO;

Condition means a condition set out in the relevant Transfer Agreement;

Credit Support means any Transaction Documentation evidencing an obligation of a person other than the Primary Obligor to make payment in respect of the TEPO;

Data Corruption means any distortion or loss of data that renders an Electronic Record, as submitted, unreadable in whole or in part, as determined by the Addressee;

Data Match means the culmination of a process, automated or manual, whereby data contained in an Electronic Record is matched against the corresponding required data set out in a Transfer Agreement resulting in no Data Mismatches;

Data Mismatch means the failure of any data set out in an Electronic Record to match the corresponding required data set out in a Transfer Agreement;

Data System means a computerised or an electronic or any other automated system or platform used to process and manipulate data, initiate an action or respond to data messages and which is capable of effecting a successful Transfer;

Due Date means the date on which a TEPO is to be paid in full;

Electronic Record means data created, generated, sent, communicated, Received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to satisfy the required Transaction Documentation, whether generated contemporaneously or not, that is:

- a. capable of being authenticated as to the apparent identity of a Submitter and the apparent source of the data contained in it and as to whether it has remained complete and unaltered; and
- b. capable of being examined for compliance with the terms and conditions of a Transaction or a relevant Transfer Agreement;

Obligor means any of:

- a. a Primary Obligor; and
- b. any person that has an obligation under any Credit Support;

Paper Document means a document in paper form;

Parties means the parties to the Transaction;

Points of Reserve means, where payment has been made Under Reserve, those obligations of the Seller that the Parties have agreed must be satisfied for payment to become final;

Primary Obligor means each person that has a primary obligation to make payment under the TEPO;

Purchase Price means the amount (which may be calculated using an agreed formula) agreed between the Seller and the Buyer to be paid for a TEPO;

Received (and its derivations) means:

- a. in the case of an Electronic Record, when it satisfies Rule 15 (b) (i); and
- b. in the case of a Paper Document when it satisfies Rule 15 (b) (ii);

Repurchase Terms means the terms on which the Seller must repurchase the TEPO from the Buyer if the Points of Reserve are not satisfied by the Reserve Date;

Reserve Date means the date by which the Points of Reserve must be satisfied by the Seller;

Seller means the Party that sells the TEPO;

Settlement Date means the date falling 2 Business Days after determination by the Buyer that it has received satisfactory Transaction Documentation in accordance with Rule 7;

Submitter means a Party that sends, or makes available, Transaction Documentation to an Addressee;

Trade Date means the date of the relevant Transfer Agreement;

Transaction means the Transfer of a TEPO by the Seller to the Buyer incorporating these rules;

Transaction Documentation means Electronic Records or Paper Documents;

Transfer means the transfer of the rights and benefits of a TEPO by the Seller to the Buyer, by whatever appropriate and effective means agreed between the Seller and the Buyer, and which must include the transfer of exclusive control;

Transfer Agreement means the relevant agreement signed and dated between the Seller and the Buyer setting out the terms of the related Transaction.

Transferable Electronic Payment Obligation or TEPO means:

- a. an obligation (conditional or unconditional) in electronic or digital form of the Primary Obligor to make payment of a specified amount on a specified date or on demand after satisfaction, where relevant, of any Conditions and which is capable of exclusive control by the Buyer; and
- b. all the rights, title and interest to receive or recover payment from each Obligor under each Credit Support;

Under Reserve means any payment made or to be made by the Buyer that is specified as being conditional upon Points of Reserve; and

Underlying Transaction means the transaction pursuant to which the TEPO arises.

3. Interpretation

For the purpose of these rules:

- a. Where applicable words in the singular include the plural and in the plural include the singular.
- b. Clause headings do not affect their interpretation.
- c. Unless the context otherwise requires, "A or B" means "A or B or both", and "A and B" means "both A and B".
- d. The word "person" includes any individual, firm, company, corporation, government, state or agency of a state, or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).

- e. The word “signed” (and its derivations) when applied to a Paper Document or Electronic Record means that a relevant Paper Document or Electronic Record is signed by or on behalf of the Seller or the Buyer utilising, in the case of an Electronic Record, an electronic signing standard that can be authenticated and verified by the Party to whom the relevant Electronic Record is presented.
- f. The words “after”, and “within” when used to determine a period of time exclude the date mentioned.
- g. The use of the words “include”, “includes” and “including” is by way of illustration or emphasis only and should not be construed as, nor should take effect as, limiting the generality of any subsequent words.

4. Transfer Agreements for the Transfer of a TEPO

- a. To create a Transaction, there must be a signed Transfer Agreement on the Trade Date between the Seller and the Buyer to Transfer the TEPO.
- b. Each Transfer Agreement must stipulate:
 - i. details of the TEPO, any Conditions to be satisfied to make it an unconditional obligation and any Credit Support including the amount, currency, Due Date and Obligors;
 - ii. a list of the required Transaction Documentation known by the Parties at the date of the Transfer Agreement;
 - iii. the Availability Date;
 - iv. the Purchase Price;
 - v. the Settlement Date or an anticipated Settlement Date; and
 - vi. its governing law and jurisdiction provisions.

5. Recourse

- a. On the Settlement Date, the Seller sells to the Buyer and the Buyer purchases from the Seller the TEPO without recourse to the Seller except as provided under Rule 5 (b) or Rule 8.
- b. If the Seller is an Obligor under the TEPO or any Credit Support, nothing in these rules will affect the Seller’s obligations in its capacity as Obligor and the Buyer shall have recourse to such Seller subject to any agreed terms.

6. Satisfaction of Conditions

- a. Each party must satisfy all Conditions applicable to it in accordance with the relevant Transfer Agreement no later than the Availability Date.
- b. If any Condition is or is expected to remain unsatisfied on the Availability Date, the Parties may agree to postpone the Availability Date.

- c. Subject to Rule 6 (b) if all applicable Conditions are not satisfied in accordance with the relevant Transfer Agreement by the Availability Date, and the Parties have not agreed to postpone the Availability Date, the Transfer Agreement shall terminate. Any such termination of the Transfer Agreement will not prejudice either Party's rights under the Transfer Agreement or applicable law.

7. Satisfactory Transaction Documentation

- a. The Seller must deliver the required Transaction Documentation to the Buyer no later than the Availability Date.
- b. The Buyer must:
 - i. examine manually or using an automated system, the Electronic Records in accordance with Rule 11 and market practice;
 - ii. examine the Paper Documents in accordance with market practice; and in each case,
 - iii. determine whether they constitute satisfactory Transaction Documentation.
- c. In making its determination under Rule 7 (b) (iii) the Buyer is entitled to take into account, whether:
 - i. the required Transaction Documentation is supported by satisfactory evidence as to their authenticity;
 - ii. each of the TEPO and the obligations in any Credit Support is a legal, valid, binding and enforceable obligation of the relevant Obligor;
 - iii. payment of the TEPO will be made on the Due Date in full in the relevant currency without set-off or counterclaim or any deduction or withholding for tax or otherwise;
 - iv. the TEPO and the rights under the Credit Support are freely transferable; and
 - v. the required Transaction Documentation conform to the terms of the Transfer Agreement.
- d. If the Buyer determines that:
 - i. the Transaction Documentation delivered and examined is not satisfactory; or
 - ii. additional Transaction Documentation is required,

it must notify the Seller of this within 2 Business Days for Electronic Records and/or 5 Business Days for Paper Documents, providing in reasonable detail the grounds for its determination and state any additional Transaction Documentation required.
- e. The Buyer must notify the Seller when it has determined that it has Received satisfactory Transaction Documentation within 2 Business Days for Electronic Records and/or 5 Business Days for Paper Documents. Payment of the Purchase Price constitutes notice unless payment is made Under Reserve.
- f. Any determination or payment of the Purchase Price by the Buyer is without prejudice to the liability of the Seller under Rule 8.
- g. Transaction Documentation Received that is not required or which is found not to be satisfactory shall be disregarded and returned to the Seller by the Buyer.

8. Liabilities of the Parties

- a. Each Party is liable to the other Party if either of the following events happens:
 - i. it does not have the authority to sign and perform its obligations under the Transfer Agreement, or the terms of the Data System under which the relevant TEPO has been created or is to be transferred, as applicable, or has failed to take such action as is necessary to ensure effective signature and performance; or
 - ii. its obligations under or in connection with the Transfer Agreement or, the terms of any Data System under which the relevant TEPO has been created or is to be transferred, do not constitute legal, valid, binding and enforceable obligations.

- b. In addition to Rule 8 (a) the Seller to whom the relevant TEPO was first issued, or who is the Primary Obligor under such TEPO, is also liable to its Buyer (the “**First Buyer**”) if any one or more of the following events happens:
 - i. the relevant TEPO has not been properly created or constituted in accordance with the terms or process of the Data System in or pursuant to which the relevant TEPO initially came into existence;
 - ii. it knew or ought to have known on the Settlement Date of any event or circumstance relating to the TEPO, any Credit Support or the Underlying Transaction that could affect:
 - A. the existence of the TEPO on its Due Date; or
 - B. the existence of any rights and obligations under any Credit Support,and did not disclose this to the First Buyer before the Trade Date;
 - iii. when it Transfers the TEPO and the rights under any Credit Support to the First Buyer, it is not the sole legal and beneficial owner of the TEPO and those rights, both of which must be free from third party claims or rights;
 - iv. the TEPO and the rights under any Credit Support have not been irrevocably and unconditionally transferred to the First Buyer on or before the Settlement Date;
 - v. it has not, whether before or after the Settlement Date, complied with or has breached any obligation binding on it under the TEPO, any Credit Support or the Underlying Transaction that affects the existence of the TEPO on its Due Date, or the existence of any rights and obligations under any Credit Support;
 - vi. there has been, whether before or after the Settlement Date, a fraud in relation to either the TEPO or the Underlying Transaction that affects the existence of the TEPO or the existence of any obligation under any Credit Support.

- c. In addition to Rule 8 (a), where the Seller is also the First Buyer, it shall also be liable to its Buyer if any one or more of the following events happens:
 - i. it did not disclose on or before the Trade Date any information Received from its Seller relating to the TEPO, any Credit Support or the Underlying Transaction about an event or circumstance that affects the existence of the TEPO, or the existence of the rights and obligations under any Credit Support;

- ii. when it Transfers the TEPO and the rights under any Credit Support to the Buyer, it is not the sole legal and beneficial owner of the payment claim and those rights, which in both cases must be free from third party claims or rights;
 - iii. the TEPO and the rights under any Credit Support have not been irrevocably and unconditionally transferred to the Buyer on or before the Settlement Date;
 - iv. when it purchased the TEPO, it did not take appropriate steps in accordance with market practice to determine that the TEPO and any Credit Support is legal, valid, binding and enforceable against the relevant Obligor and that the TEPO and the rights under any Credit Support are capable of being irrevocably and unconditionally transferred; or
 - v. when it purchased the TEPO, it did not take appropriate steps in accordance with market practice to determine that the required Documents reflect the Underlying Transaction.
- d. In addition to Rule 8a, the Seller (other than the Seller referred to in Rule 8(b) or (c)) is also liable to its Buyer if any one of more of the following events happens:
- i. it did not disclose on or before the Trade Date any information Received from its Seller relating to the TEPO, the Credit Support or the Underlying Transaction about an event or circumstance that affects the existence of the TEPO, or the existence of the obligations under the Credit Support;
 - ii. when it Transfers the TEPO and the rights under any Credit Support to the Buyer, it is not the sole legal and beneficial owner of the payment claim and those rights, which in both cases must be free from third party claims or rights;
 - iii. the TEPO and the rights under any Credit Support have not been irrevocably and unconditionally transferred to the Buyer on or before the Settlement Date; and
 - iv. when it purchased the TEPO, it did not take appropriate steps in accordance with market practice to determine that the TEPO and any Credit Support is legal, valid, binding and enforceable against the relevant Obligor and that the TEPO and the rights under any Credit Support are capable of being irrevocably and unconditionally transferred.
- e. The Parties may agree to modify or exclude any of the liabilities in this Rule 8.
- f. The Seller is only liable to its immediate Buyer but it may agree that it shall be liable to subsequent Buyers in respect of all or any of the above agreed events either by stating that liability for such events are for the benefit of such future Buyers or by permitting assignment of the liability for such events or by any other legally effective means.

9. Payment

- a. The Buyer must pay the Purchase Price to the Seller on the Settlement Date.
- b. Payment must be made in the currency specified in the Transfer Agreement without set-off, deduction or counterclaim.
- c. Payment must be made in immediately available funds at the relevant account stated in the Transfer Agreement, provided the Settlement Date is a Business Day in that place. If the Settlement Date is not a Business Day, payment must be made on the first Business Day in that place after Settlement Date.

10. Payment under Reserve

- a. If the Parties agree that payment by the Buyer may be made Under Reserve, the Transfer Agreement must specify or be amended or supplemented to specify:
 - i. the Points of Reserve;
 - ii. the Reserve Date; and
 - iii. the Repurchase Terms, using the rate determined under the original sale terms.
- b. The Seller must satisfy the Points of Reserve by the Reserve Date.
- c. If by the end of the Reserve Date:
 - i. the Points of Reserve are not satisfied; and
 - ii. the Parties have not agreed to postpone the Reserve Date,the Buyer will be entitled to require the Seller to repurchase on the Repurchase Terms by notice to the Seller.
- d. If the Buyer requires the Seller to repurchase in accordance with Rule 10 (c) the Seller must, within 5 Business Days of Receipt of the Buyer's notice, complete the repurchase on the Repurchase Terms and pay the relevant amount to the Buyer in accordance with Rules 9 (b) and 9 (c).
- e. Within 5 Business Days of receipt of payment from the Seller, the Buyer must:
 - i. return to the Seller all Transaction Documentation Received from the Seller; and
 - ii. take all actions and sign all Transaction Documentation necessary to ensure that the rights to the TEPO, the Credit Support and other required Transaction Documentation are re-transferred to the Seller.

11. Data Matching

- a. The Parties must ensure that any Electronic Record submitted by them is an authentic, accurate and complete Electronic Record in the format agreed by the Parties provided that, if none is agreed, the format shall be selected by the Submitter.
- b. Any requirement for submission of one or more originals or copies of an Electronic Record is satisfied by the submission of one Electronic Record.
- c. Any Electronic Records submitted but not required by the terms of the Transaction may be disregarded and disposed of by the Addressee in any manner deemed to be appropriate without any responsibility.
- d. The data submitted is the only data that will be used to determine a Data Match or a Data Mismatch.

12. Data Corruption

- a. If an Electronic Record appears to have been affected by Data Corruption, the Addressee may inform the Submitter and may request that it be re-submitted.
- b. If an Addressee does not inform the Submitter by close of business on the second Business Day following the date the relevant Electronic Record is Received that it appears to have been affected by Data Corruption, that Electronic Record shall be considered as having been accepted by that Addressee.
- c. If, following notice of Data Corruption, Received from the Addressee, the Submitter does not resubmit the relevant Electronic Record by close of business on the latest date for submission of an Electronic Record specified in the Transaction, the Addressee may treat the Electronic Record as not submitted and may dispose of it in any manner deemed by it to be appropriate without any responsibility.

13. Transfer

- a. The Seller acting in the capacity of transferor, may effect a Transfer of a TEPO in accordance with (i) the terms of that TEPO, (ii) the terms of any relevant Data System agreed to be used by the Seller and Buyer and (iii) the applicable law. Upon such Transfer, the Buyer shall become the Beneficiary under that TEPO and retains rights of recourse against the Seller, as provided in Rule 5 (a), unless such rights are explicitly waived when the Transfer is effected.
- b. If the rights and benefits of a TEPO have been transferred, the Primary Obligor must, at the time the Transfer is made, be notified of the name and address of the Beneficiary, together with details of the amount transferred to the Beneficiary, and whether the Buyer has waived its rights of recourse to the Seller or to any prior Seller. Such notification may be made using the Data System under which the TEPO was created and/or is to be transferred if a notification function is available or by any other effective method, in each case by the Seller. If the Seller fails to notify the Primary Obligor, the Buyer may do so.
- c. Any Credit Support shall be transferred in accordance with the terms of that Credit Support and the provisions of the applicable law. Upon such Transfer, the Beneficiary has all the rights in respect of the Credit Support.

14. Amendments

- a. An amendment to the terms and conditions of a TEPO requires the agreement of the Primary Obligor, the Beneficiary and any other person who is a legal party to the TEPO. As of that moment the TEPO will be deemed amended.
- b. Subject to Rule 14(a), the terms and conditions of a TEPO are amended by the submission of a new Electronic Record, that incorporates the amended criteria.

15. Notices

- a. Any notice or Transaction Documentation in respect of the Transaction may be submitted by agreed electronic means or physically delivered to, as the case may be, the relevant contact numbers and addresses set out in the Transfer Agreement.
- b. Any notice or Transaction Documentation to be sent shall be deemed to have been Received:

- i. if sent electronically when it enters the information system (which may be the Data System) of the applicable recipient in a form capable of being accepted by that system and, where relevant, capable of being examined by the Addressee for compliance with the terms and conditions of a Transaction; and
 - ii. if sent by mail, courier or any other physical means, on actual delivery.
- c. A notice or Transaction Documentation delivered in accordance with Rule 15 (b) but Received on a day that is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been Received on the next Business Day.
- d. Any receipt or acknowledgement of receipt does not imply acceptance or refusal.

16. Force Majeure

Neither the Seller, nor the Buyer assume any liability or responsibility for the consequences arising out of the interruption of its business, including its inability to access a Data System other than its own, or a failure of equipment, software or communications network, caused by acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, cyberattacks, or by any strikes or lockouts or any other causes, including failure of equipment, software or communications network, plague, epidemic, pandemic, natural disaster or extreme natural event beyond their control.

17. Applicable Law

- a. The applicable law shall be as specified in the terms and conditions of the Transfer Agreement.
- b. These rules supplement the choice of the applicable law agreed between the Parties to the extent not prohibited by, and not in conflict with, that applicable law or any applicable regulation.
- c. The Seller, Buyer or any other Beneficiary is not required to comply with its obligations under a Transaction and assumes no liability or responsibility for any consequences in respect of such non-compliance to the extent prohibited by applicable law.

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About ITFA

The International Trade and Forfaiting Association, ITFA, is the worldwide trade association for companies, financial institutions and intermediaries engaged in global trade, forfaiting, supply chain and receivables financing.

Founded in 1999, ITFA is an association made up of circa 300 members from all over the world. ITFA brings together banks and financial institutions who are engaged in originating and distributing trade related risk and finding creative ways to mitigate risks. Expanding from its original focus on the purchase and discounting of simple but robust payment instruments, such as negotiable instruments and letters of credit, the forfaiting industry has embraced new instruments and created new structures to become a prominent part of supply chain finance. ITFA acts as a valuable forum for its members to interact and transact business together profitably and safely.

ITFA represents the rights and interests of banks, financial institutions and service providers involved in trade risk and asset origination and distribution. ITFA, working with, and for, its members:

- delivers unique opportunities for networking within a professional community
- disseminates knowledge and provides education
- contributes to creating a safe, transparent trade finance industry
- co-operates with partner associations across the trade finance spectrum to promote the interests of its members and their treatment by regulators and legislators
- is at the forefront of understanding current and emerging changes, challenges and opportunities in trade finance, and protecting the interests of the incumbents
- continuously improves governance and best practice and shapes rules, laws and documentation that affect its members and the industry
- attracts new skills and talent to the trade finance industry
- facilitates the expansion of trade and trade finance globally