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PRACTICAL INFORMATION

Minimum standards for the specific preconditions
for disbursements under buyer credit cover

EXPORT CREDIT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Hermes Cover**

TABLE OF CONTENTS

MINIMUM STANDARDS FOR THE SPECIFIC PRECONDITIONS FOR DISBURSEMENTS UNDER BUYER CREDIT COVER	3
CARDINAL DUTIES OF THE BANK	3
MINIMUM STANDARDS FOR THE SPECIFIC PRECONDITIONS FOR DISBURSEMENTS UNDER BUYER CREDIT COVER	4
1. PROOF OF DELIVERY	4
2. PROOF OF THE PERFORMANCE OF SERVICES	5
3. SPECIAL CASES	5
4. ORIGINAL DOCUMENTS/COPIES AND RETENTION OF DOCUMENTATION	6

Minimum standards for the specific preconditions for disbursements under buyer credit cover

The Export Credit Guarantees of the Federal Republic of Germany are designed for the promotion of German exports. For this reason it is a crucial requirement that the export transaction supported by Federal Government cover actually takes place. The requirements applied by the Federal Government to the disbursement of the credit, which were specified in Art. 15 No. 2 of the General Terms and Conditions for Buyer Credit Guarantees (FKG) as of 1 January 2012, are intended to further this purpose.

The definition of the requirements is based on a relationship of trust between the exporter, the bank and the Federal Government. The Federal Government is expressly concerned that the decision on how to structure the export transaction, in particular the agreement of payment terms, should remain in the hands of the exporter. Besides, it wishes to avoid creating processes which constitute a hindrance to the smooth operation of a transaction. In particular, the duty to provide proof should not lead to a situation where the negotiating or contractual position of the exporter is weakened without good cause due to requirements for cooperative action on the part of the buyer which were not originally foreseen or where he must expend an unreasonable amount of time and resources for the collection and retention of the necessary proof.

We would like to expressly point out that the following regulations do not represent a final and exhaustive ruling. There is still sufficient flexibility in the system to accommodate special cases in consultation with the Federal Government. To this extent, no configuration of a transaction is excluded a priori. The crucial point is that the bank should fulfil its cardinal obligations under the buyer credit cover with the standards of due diligence expected of banks.

CARDINAL DUTIES OF THE BANK

According to Art. 15 No. 2 of the General Terms and Conditions of Cover for tied – i.e. combined or isolated – buyer credits (GC FKG), one of the cardinal obligations of

the bank is that the bank must, before disbursing any funds from the covered buyer credit and using the standards of due diligence normal for banks, check that the exporter has presented evidence to it that the deliveries of goods and/or provision of services detailed in the guarantee document have in fact been carried out.

The primary criteria for the proof to be presented by the exporter are the preconditions for the disbursement of funds set out in the guarantee document. These normally require proof of all supplies and services by means of “documents evidencing delivery of goods or provision of services as well as invoices”.

Departing from this general rule, the guarantee document may, in exceptional and justified cases, limit the documentary proof evidencing the delivery of goods/provision of services to individual deliveries/services (e.g. key components). These key components must be defined before cover is granted. The Federal Government will only approve such a request of the policyholder if these deliveries/services evidence the actual performance of the export transaction. A further requirement is that the presentation of the normally required documents would involve a disproportionate effort on the part of the policyholder due to their sheer number.

The bank is obliged to carry out a **plausibility check** of such documents. It may only disburse funds from the buyer credit when the check has established to its satisfaction that the disbursements intended by it actually correspond to the deliveries and services made by the exporter as evidenced by the documentation. As a rule, all recorded documents evidencing delivery of goods/provision of services available to the bank must be used for this plausibility check.

The bank may, in normal circumstances, rely on the information given to it by the exporter in its plausibility check – in particular with regard to the origin of the goods, foreign content, local costs or place of destination. Since the presentation of certificates of origin is not normally required by the guarantee document as pre-

condition for disbursement, they need not be submitted by the exporter in such cases and hence not checked by the bank. In this respect, the Federal Government considers the recorded documents evidencing delivery of goods/provision of services to be pivotal for the check in order to determine the amount of foreign supplies and local costs in practice. If, in the course of this plausibility check, serious doubts arise as to the performance of the export transaction as documented, the bank must turn to the exporter in order to satisfy itself that the details are correct. The responsibility for the correctness of such information belongs to the duties incumbent on the exporter, and the bank is justified in relying on such information. The bank only has a cardinal obligation towards the Federal Government if and when the information given by the exporter appears at first sight not to be plausible. Any doubts arising must be clarified prior to the relevant disbursement of the buyer credit.

The duties of the bank on the one side and the exporter on the other apply only to their respective spheres of obligation. The bank does not have to assume an all-inclusive “indemnity liability” for the performance of the exporter. It bears the responsibility for the structuring of the credit contract, in particular it must ensure that the specific preconditions for disbursements conform to the minimum standards as well as, where appropriate, for the documentation of any collateral involved. The buyer credit is an abstract legal transaction entirely separate from the export contract. In particular, the bank has no obligation to examine issues concerning any possible defects in goods or services supplied or similar shortcomings of performance. The exporter is responsible for ensuring that the export transaction is actually carried out – as described in the documentation.

MINIMUM STANDARDS FOR THE SPECIFIC PRECONDITIONS FOR DISBURSEMENTS UNDER BUYER CREDIT COVER

1. PROOF OF DELIVERY

Unilateral declarations of the exporter confirming deliv-

ery not backed up by accompanying transport or comparable documents are in principle not an acceptable precondition for disbursement. This ruling also applies if and when the buyer expressly waives the requirement that he countersign the documents or has declared prior to delivery that he will regard deliveries as having been made as per contract.

It must be apparent from the proofs of delivery including any relevant other documentation, and taking the entire framework into account, that there is a plausible connection to the supply contract which underlies the covered buyer credit.

Suitable proofs of delivery are in particular:

- waybill (including multimodal waybill), bill of lading
- consignment note
- a forwarding agent's certificate of receipt (FCR)
- a postal receipt
- confirmation of receipt from a courier
- a warehouse receipt for storage in a third party warehouse.

In principle not acceptable are in particular:

- certificates or similar documents signed by the exporter and/or buyer/borrower;
- collective documents (e.g. a certificate of import figure), with which the foreign borrower confirms in the aggregate that certain goods have been imported during a certain period.

The transportation documents required pursuant to the guarantee document have to meet international standards as regards form, a fact that has to be checked by the bank. It is not necessary that the transportation documents are countersigned by executives of the exporter but the bank has to satisfy itself of the plausibility (in particular the documents' conclusiveness).

If the delivery documents clearly demonstrate that the transport has taken place, the Federal Government does not require the presentation of additional documents,

which are not transportation documents, to verify the delivery.

In the case of **local costs and foreign content**, comparable documents or other proofs giving as much information as possible with a high degree of specific detail can be accepted. In principle a certificate of acceptance from the buyer can also be considered as sufficient in this context if no suitably detailed proofs of delivery are available.

2. PROOF OF THE PERFORMANCE OF SERVICES

Certificates, acceptance reports or similar documents issued by the company providing the service and signed by the buyer or a third party authorized by him to do so are considered to be suitable proof of the performance of services. If and when the share of such services in the total order value is 30% or less, it can be agreed that a unilateral declaration from the exporter will be accepted as proof for a disbursement.

The signed proofs of performance must contain detailed information describing:

- the contractually due service and
- the export contract underlying the buyer credit cover.

3. SPECIAL CASES

The obligation of the bank to perform a check before making disbursements under buyer credit cover already existed before the changes to the General Terms and Conditions. The way of handling the special cases described in the following is essentially in line with the practice followed to date.

a) Passing of price risk/loss of power of disposal over goods in Germany

If the contractual provisions agreed stipulate that the power of disposal over the goods is already to pass to the importer in Germany (e.g. Incoterms EXW, storage in a third party warehouse) and that the disbursements from the buyer credit are to be made upon such passing,

the bank must check, on the basis of appropriate documents, whether the exporter, in fulfilling his obligation to deliver, has initiated the cross-border shipment of the goods. The bank does not need to check subsequently on the actual cross-border shipment of the goods, unless it has a specific reason to doubt that the goods have been shipped abroad. In the case that Incoterms EXW are agreed, the exporter's statement that he has made the goods available in his warehouse is generally sufficient.

Suitable proofs here are in particular:

- a forwarding agent's certificate of receipt (FCR)
- customs documents, as far as these are available
- a warehouse receipt given on delivery to a third-party warehouse, endorsed on the buyer's order form
- a certificate of acceptance issued by the exporter and, in the case of collection by the buyer, signed by the latter.

b) Reimbursement procedure

In principle, the same requirements apply to the reimbursement procedure as to the direct disbursement procedure. In addition, receipt of the purchase price by the exporter must be checked on the basis of suitable documentary proof.

The receipt of payment must be evidenced by proof provided by the exporter (printout of the respective part of the customer account from the exporter's internal booking system) or by a bank certificate. The plausibility check must be possible and take place on the basis of the documentary proof by means of relating the data to the underlying export transaction as well as the buyer/borrower. If certain particulars are missing, they may, by way of exception, be replaced by a specific declaration of the exporter regarding these particulars provided that there is a comprehensible explanation as to why a plausibility check on the basis of additional records or documents is not possible either. In the event that customary charges (e.g. transaction fees) have been deducted from a payment received, this will not have any effect on the

complete reimbursement of the borrower if the difference is proven by an appropriate receipt and the exporter does not claim that the amount has not been paid in full due to the deductions.

c) Progress payments

It is a precondition for disbursement that the borrower must accept liability for the disbursement of each amount of the loan to the exporter and that the progress towards completion reached at that time should be confirmed in this way. The existence of this precondition must be evidenced by the exporter by means of certificates issued by him detailing the progress towards completion of the order reached at that time, on which the buyer/borrower declares his readiness to accept liability for the disbursement from the buyer credit. If the buyer and the borrower are not identical, the certificate must be signed by both. These declarations may not be given in advance as agreements already contained in the provisions of the export or credit contract.

A mere invoice of the exporter, even if it is countersigned by the borrower and, where appropriate, the buyer, is not acceptable proof.

d) Letters of credit

If and when disbursements from the buyer credit are to be made via letter of credit, the proofs of delivery of goods and/or provision of services contained in this must comply with the minimum standards set out here. Partly inconsistent letters of credit do not call cover under a buyer credit cover into question if an authorisation by the issuing bank exists and the transaction was performed as described in the guarantee document. The issuing bank's authorisation has to be documented by the policyholder.

e) Receipt of downpayment

The receipt of the downpayment must be evidenced by proof provided by the exporter (printout of the respective part of the customer account from the exporter's internal booking system) or by a bank certificate. The

plausibility check must be possible and take place on the basis of the documentary proof by means of relating the data to the underlying export transaction as well as the buyer/borrower. If certain particulars are missing, they may, by way of exception, be replaced by a specific declaration of the exporter regarding these particulars provided that there is a comprehensible explanation as to why a plausibility check on the basis of additional records or documents is not possible either. In the event that customary charges (e.g. transaction fees) have been deducted from a payment received, this will be sufficient to prove the receipt of the downpayment if the difference is proven by an appropriate receipt and the exporter does not claim that the payment is incomplete due to the deductions.

4. ORIGINAL DOCUMENTS/COPIES AND RETENTION OF DOCUMENTATION

Copies are deemed to be sufficient for the check by the bank. If, however, original documents are provided to the bank, the check must be made using these.

The documents must be retained by the banks after checking until the buyer credit has been discharged in full. In the case of original documents, a copy of the original should be retained after checking and returning the original. This should be endorsed in a suitable place with a statement confirming that it is identical with the original. It is sufficient if the document is stored in an electronic records system.

If the check on the documentation or its retention is carried out by third parties, either within the framework of a consortium or when a third party bank is involved in the letter of credit procedure, the lending banks must ensure that they have access to the documents until the buyer credit has been discharged in full.

The retention periods necessary here may exceed the generally prescribed legal retention periods depending on the liability period in each case.

Export Credit Guarantees and Untied Loan Guarantees: instruments to promote foreign trade and investment provided by the



Federal Ministry
for Economic Affairs
and Energy

Commissioned to implement the federal funding instruments Export Credit Guarantees and Untied Loan Guarantees:



EULER HERMES

Cover from the Federal Republic of Germany for foreign business

Export Credit Guarantees and Untied Loan Guarantees as well as effective foreign trade promotion instruments of the Federal Government have been established for decades. Export Credit Guarantees (so-called Hermes Cover) protect German exporters and banks financing exports against political and commercial risks. Untied Loan Guarantees are to support raw material projects abroad regarded as eligible for promotion by the Federal Government. Both promotion instruments play an important role in fostering economic growth as well as in protecting and creating jobs. The Federal Government commissioned Euler Hermes Aktiengesellschaft to manage the federal funding instruments Export Credit Guarantees and Untied Loan Guarantees.

Information on other foreign trade promotion instruments of the Federal Government can be found at www.bundeswirtschaftsministerium.de/en under the heading Promotion of Foreign Trade and Investment.

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