

SPECIAL TERMS AND CONDITIONS

Forfeiting guarantee – SC (FFG)

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EXPORT CREDIT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Hermes Cover**

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Forfaiting guarantee – SC (FFG)

Special Terms and Conditions for the consent of the Federal Government to the assignment of covered supplier credit receivables with enhanced cover in favour of the assignee.

1. CONSENT TO THE ASSIGNMENT OF COVERED SUPPLIER CREDIT RECEIVABLES, PREREQUISITES

The Federal Government consents to the assignment of covered supplier credit receivables by the assigning exporter (“policyholder”) for the purpose of enhancing cover in favour of the company purchasing the receivables (“assignee”) in accordance with the following conditions (“**forfaiting guarantee**”):

- a) The covered supplier credit receivables may only be assigned to the following entities:
 - Credit institutions domiciled in a country which is a member of the European Economic Area (EEA) or in Switzerland
 - Domestic financial services companies which have a permit issued by the German Federal Financial Supervisory Authority (BaFin) to buy receivables on a recurring basis under master contracts (forfaiting and factoring companies).
- b) Despite the assignment, the policyholder remains the Federal Government’s contractual partner and its contractual obligations towards the Federal Government remain unchanged. It is responsible for ensuring that it is still able to perform these obligations or that they can be performed by the assignee.
- c) If the foreign buyer is notified of the assignment of the covered receivable (“disclosed assignment”), evidence of the foreign buyer’s consent to the assignment must be obtained and provided.

- d) In the case of a disclosed assignment, the abstract collateral must be transferred by the policyholder to the assignee if and as soon as this is necessary to ensure legal enforceability.
- e) Partial assignments by the policyholder on the covered receivable and further assignments by the assignee on the covered receivable (in whole or in part) require the Federal Government’s consent.
- f) The export receivable which is the subject of the supplier credit cover must be assigned in full (100%) to the assignee prior to the commencement of payment of the forfaiting proceeds. If only claims to individual payment instalments are forfeited, this requirement shall apply with the necessary modifications; such claims must be due for payment later than the non-forfeited payment instalments.
- g) The assignee may not cover the uninsured percentage for commercial and political risks under the supplier credit cover in any other way; in particular, recourse by the assignee to the policyholder is not permitted.
- h) The right to assert claims for indemnification against the Federal Government will accrue solely to the assignee. Indemnification amounts that have been approved will be paid to the assignee.

2. FORFAITING GUARANTEE, RIGHTS AND OBLIGATIONS OF THE ASSIGNEE

The General Terms and Conditions for supplier credit cover (hereinafter: General Conditions (G)) apply between the Federal Government and the assignee with respect to that portion which does not exceed 95 percentage points of the forfeited covered receivable subject to the following proviso:

- a) In the case of undisclosed assignments of the export claim, Art. 4 (1), 2nd subparagraph of the General Conditions (G) will not apply with regard to the assignee (no prior joint liability of third parties).
- b) Art. 4 (4) of the General Conditions (G) applies in relation to the assignee as follows: Uncollectability for commercial reasons will be presumed if the covered receivable has not been paid to the assignee one month after it falls due.

With respect to transactions executed on D/P or D/A payment terms, failure to accept the documents will not prevent payment from becoming due in the absence of any provisions to the contrary in the contract with the foreign debtor.

Expiry of a period of one month after the due date will not be a condition precedent if indemnification has already been paid under the supplier credit cover in connection with this event of loss and the foreign debtor's default is protracted.

In the case of the disclosed assignment of the covered receivable, the event of loss is only deemed to have occurred if the assignee has taken the measures required in accordance with the principles of commercial diligence to collect the covered receivable.

- c) In the indemnification procedure under the forfaiting guarantee, the Federal Government may not reject the assignee's claim solely on any of the following grounds:
 - (1) that the covered receivable is subject to any objections that impede, restrict or destroy any rights; Art. 5 (2) and (3) of the General Conditions (G) will likewise apply to the assignee;

- (2) that the policyholder has breached the obligations imposed on it (Art. 15 of the General Conditions (G));

- (3) that, notwithstanding the legally valid obligation to assign the receivables under the forfaiting agreement, the assignee has not become the lawful holder of the covered receivable as the assignment was not effective, where such ineffectiveness is due to the laws applicable in the jurisdiction in which the foreign debtor is domiciled or the jurisdiction to which the export contract is subject on the basis of the selection of such jurisdiction.

- d) The Federal Government is not entitled to set off any claims it may have against the policyholder against the assignee's claim for payment.
- e) Under the forfaiting guarantee, claims in connection with the non-payment of premiums may be asserted by the Federal Government only against the policyholder.
- f) Notwithstanding Art. 7 (1) and Art. 8 (1) of the General Conditions (G), only the relationship between the assignee and the foreign buyer will be decisive for the application of the allocation provisions under the forfaiting guarantee.
- g) Notwithstanding Art. 7 (2) of the General Conditions (G), the uninsured percentage to be retained by the policyholder will not be deducted from the indemnification payable under the forfaiting guarantee.
- h) Notwithstanding Art. 7 (3) sentence 1 of the General Conditions (G), the Federal Government undertakes to calculate the loss within one month of submission of all documents required for the

- determination of the claim for indemnification under the forfeiting guarantee.
- i) In the case of a disclosed assignment, the assignee undertakes to pursue legal action against the foreign debtor. The same will apply if and when the assignment is disclosed at a later date. The assignee undertakes to notify the Federal Government immediately of any recoveries received and to transfer to the Federal Government any amounts owing to it.
 - j) Subject to the instructions of the Federal Government, the assignee undertakes to transfer covered receivables back to the policyholder for the implementation of measures anticipated in Art. 11 of the General Conditions (G) and to follow any instructions issued by the Federal Government in this respect. This will not prejudice any claim for indemnification that may be held by the assignee.
 - k) The provisions in Art. 17 of the General Conditions (G) will apply with the proviso that the Federal Government will contribute to the costs of legal proceedings if it has approved the policyholder's claim for indemnification under the supplier credit cover.
 - l) The assignee undertakes to take all due and reasonable measures in its sphere of influence to prevent an insured event from occurring or to mitigate a loss in line with the principles of commercial due diligence, and to follow any instructions issued by the Federal Government in this regard.
 - m) Before paying the forfeiting proceeds to the policyholder in full or in part, the assignee undertakes to satisfy itself in accordance with the customary principles of due diligence applicable to banks that the policyholder has provided evidence of the deliveries and services set out in the guarantee declaration, respectively. The explanations given in the reference document entitled "Minimum standards for the specific preconditions for disbursements under buyer credit cover" will apply accordingly.
- The assignee will confirm the results of its plausibility check to the Federal Government in a qualified declaration set out on a form provided by the Federal Government.
- n) The assignee may only recover amounts in excess of the amount covered by the Federal Government from the policyholder if the Federal Government has rejected the policyholder's claim for indemnification under the supplier credit cover in whole or in part.
 - o) The assignee undertakes to recover at its own expense all amounts owed by the policyholder under recourse claims accruing to the Federal Government under the forfeiting guarantee. The assignee undertakes to consult with the Federal Government with regard to its own recourse measures and those it takes on behalf of the Federal Government.
 - p) Insofar as any obligations on the part of the assignee towards the Federal Government arise from these Special Conditions (FFG), Art. 16 (3)–(7) of the General Conditions (G) will apply accordingly to the assignee.
 - q) Prior to indemnification, the reassignment of the covered receivable to the policyholder will not require the Federal Government's specific approval. However, the Federal Government must be notified immediately, upon which the forfeiting guarantee will be returned to the Federal Government and the Federal Government released of its obligations under the forfeiting guarantee.

- r) The Federal Government, the Federal Audit Office or any agents designated by them are entitled to inspect, at any time, records, books of account, documents and other instruments at the assignee's premises which may be relevant for the supplier credit cover or the forfeiting guarantee and to make or require to be made copies thereof. At the Federal Government's request, the assignee agrees to have foreign-language documents translated into German at its own expense.

3. DEFINITIONS AND APPLICATION, CONDITION PRECEDENT

- a) Claims that have been transferred, subrogated or assigned within the meaning of these Special Conditions (FFG) also include claims which – for whatever reason – are not legally valid or in connection with which the assignee has not become the holder of the covered receivable due to defects of title.
- b) The Supplementary Provisions relating to the Assignment of Guaranteed Amounts – GC (FAB) will not apply unless otherwise stipulated in these Special Conditions (FFG).
- c) The consent to the assignment pursuant to Clause 1 as well as the enhancement of the supplier credit cover in favour of the assignee pursuant to the provisions of Clause 2 **are subject to the condition precedent** (1) that the Federal Government has been notified of the assignment of the covered receivable and the claims under the cover and (2) that, after payment of the premium, the Federal Government has received the assignee's undertaking to be bound by the obligations specified in these Special Conditions (FFG), specifically in the form provided by the Federal Government. The Federal Government will provide the policyholder and the assignee with confirmation that the conditions have been duly fulfilled.

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:



Cover from the Federal Republic of Germany for foreign business

Export Credit Guarantees and Untied Loan Guarantees have been established and effective foreign trade promotion instruments of the Federal Government 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. 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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