

OCTOBER 2018

PRACTICAL INFORMATION

HERMES COVER SPECIAL

Duties under supplier and buyer credit cover

EXPORT CREDIT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Hermes Cover**

TABLE OF CONTENTS

DUTIES UNDER SUPPLIER AND BUYER CREDIT COVER	3
OBSERVANCE OF DUTIES: HOW TO PROTECT YOUR CLAIM FOR INDEMNIFICATION	3
WHAT ASPECTS MUST ALREADY BE CONSIDERED WHEN APPLYING FOR AN EXPORT CREDIT GUARANTEE?	3
WHAT GENERAL ASPECTS MUST BE CONSIDERED WHEN EXECUTING A TRANSACTION?	4
WHO IS RESPONSIBLE FOR ENSURING THAT EXISTING GOVERNMENT REGULATIONS ARE OBSERVED?	4
WHAT SHOULD I DO IF CHANGES TO THE EXECUTION OF THE TRANSACTION ARE NECESSARY OR REQUESTED BY THE CUSTOMER AFTER THE GUARANTEE HAS BEEN GRANTED?	5
WHAT SHOULD YOU DO IF YOU BECOME AWARE OF ANY CIRCUMSTANCES CONSTITUTING AN INCREASE OF RISK?	6
INCREASE OF RISK	6
WHAT MEASURES MUST BE TAKEN TO PREVENT/MITIGATE LOSS?	7
LEGAL VALIDITY OF THE DOCUMENTED SECURITY	8
WHO IS RESPONSIBLE FOR COLLECTING THE COVERED RECEIVABLE AFTER INDEMNIFICATION HAS BEEN PAID?	9
CONCLUSION	9
APPENDIX: EXTRACTS FROM THE GENERAL TERMS AND CONDITIONS SUPPLIER CREDIT GUARANTEES (GC [G]) AS AN EXAMPLE	10
ART. 5 DUE DATE AND LEGAL VALIDITY OF THE GUARANTEED AMOUNT	10
ART. 9 REPAYMENT OF INDEMNIFICATION	10
ART. 10 SUBROGATION OF RIGHTS AND CLAIMS	11
ART. 11 LEGAL ACTION FOLLOWING INDEMNIFICATION	11
ART. 15 DUTIES OF THE POLICYHOLDER	12
ART. 16 LEGAL CONSEQUENCES OF NON-COMPLIANCE WITH DUTIES	14
ART. 17 PARTICIPATION OF THE FEDERAL GOVERNMENT IN COSTS ARISING FROM LEGAL PROCEEDINGS AS WELL AS FROM THE PREVENTION OR MITIGATION OF LOSSES	15

Duties under supplier and buyer credit cover

OBSERVANCE OF DUTIES: HOW TO PROTECT YOUR CLAIM FOR INDEMNIFICATION

Export credit guarantees (so-called Hermes Cover) protect your export business from the economic and political risks of payment default. If your foreign business partner fails to honour its payment obligations, you can apply for indemnification to the Federal Government. However, to ensure that you can claim this indemnification, there are a number of duties which are set out in the General and Special Terms and Conditions for Export Credit Guarantees which you must observe.

Further to the article entitled “Indemnification procedure” in the “Hermes Cover Special” series, which provides answers to frequent questions concerning the conditions for claiming indemnification and the nature of the indemnification procedure, this document sets out the duties which are of particular practical relevance. It should be noted that this is not an exhaustive list of all the details to be observed as each transaction is unique. In order to gain a complete overview of the duties relevant for each form of cover, we recommend you to familiarise yourself with the relevant General Terms and Conditions (particularly Art. 15 and 16 GC, see appendix) as early as possible. In addition, further obligations may be set out in the Special Conditions attached to your Guarantee Declaration. The employees of Euler Hermes will be pleased to answer any additional questions which you may have.

WHAT ASPECTS MUST ALREADY BE CONSIDERED WHEN APPLYING FOR AN EXPORT CREDIT GUARANTEE?

Export credit guarantees are issued on the basis of the details which you submit on the transaction for which you request cover as well as the data required to assess

the risk. However, we do not check the details you provide for any errors or omissions when we process your application; this is not done until a possible indemnification procedure. Accordingly, you are solely responsible for ensuring that the data you submit is free of any errors or omissions. If, during the ensuing claims handling process, it becomes evident that the decision made by the Interministerial Committee for the granting of cover has been influenced by any errors or omissions in the data submitted, the Federal Government is released from its obligation to indemnify a loss if it is determined that you knew or could reasonably have been expected to know that the details which you provided contained errors or omissions (Art. 15 No. 1, Art. 16 (1) GC, see appendix).

Please therefore make sure that you disclose all circumstances of material importance for the granting of cover in full and correctly in writing during the application process and correct them without delay in the event of any additions or changes to the details disclosed in the application. In the case of any doubt, all details asked for in the application form or in any other manner are deemed to be of material significance for the Interministerial Committee's decision.

EXAMPLE:

In practice, the credit rating data on your foreign customer is highly relevant as this is required for the risk assessment and thus has a key influence on the decision on whether to grant cover. If you have previously done business with your foreign customer and payment periods have been exceeded, it is crucial for you to truthfully disclose this negative payment record.

The cover provided for a transaction applies solely to the content set forth in the Guarantee Declaration. It is therefore crucial to check this document upon receipt for any errors or omissions and to notify us immediately of any necessary changes.

EXAMPLE:

In this connection, it is particularly important to ensure that the foreign customer's name has been stated correctly as sometimes different companies have the same name, the only difference being the suffix designating the legal form. If, for example, it becomes evident that the customer which has been supplied is legally not identical to the company for which cover has been provided due to a difference in the name stated, the Federal Government will be released from any liability.

WHAT GENERAL ASPECTS MUST BE CONSIDERED WHEN EXECUTING A TRANSACTION?

Your duty as the policyholder is to ensure for the entire duration of the transaction, i.e. from the initiation to final completion, in accordance with the standards of due and reasonable care dictated by sound business and banking practice that any possible loss is avoided (Art. 15 No. 6 GC, see appendix). The precise definition of the term "due and reasonable care dictated by sound business and banking practice" depends on the circumstances of the specific case in the light of typical national practices in the buyer's country. As a matter of principle, you are required to apply the same high standard of care and conduct your business with the same conscientiousness as you would in the absence of any cover by the Federal Government.

Regardless of the general duty to avoid loss, you must ensure that the transaction is executed in the manner described in the application and the Guarantee Declaration (Art. 15 No. 2 GC, see appendix).

In the case of buyer credit guarantees in favour of financing banks, the following must also be observed: The Federal Government provides buyer credit guarantees only for loans granted to finance German exports, i.e. the main purpose is to promote German export business.

Accordingly, a buyer credit guarantee can only be provided if it is for an eligible export transaction. What this means for the bank, in particular, is that prior to disbursing the loan it must satisfy itself with the diligence dictated by sound banking practice that the exporter has proved the delivery of the goods/rendering of the services specified in the guarantee document. This obligation, which has always tacitly applied, has been expressly added to the General Terms and Conditions as of 1 January 2012.

Accordingly, the diligence dictated by sound banking practice requires that the conditions for disbursement set out in the loan contract are such that delivery or provision of the goods/services can be verified and loan disbursements are thus contingent upon corresponding goods/services being delivered or provided. To ensure this, disbursements should only be made upon submission of documents which can be considered to constitute specific proof that the goods and/or services have been duly delivered or provided, e.g. typically consignment papers. A detailed description of the Federal Government's requirements regarding the conditions for disbursement for buyer credit guarantees can be found in the reference document "Praktische Informationen: Auszahlungsvoraussetzungen bei gebundenen Finanzkrediten – Mindeststandards", which is available for download on our homepage www.exportkreditgarantien.de/en.

WHO IS RESPONSIBLE FOR ENSURING THAT EXISTING GOVERNMENT REGULATIONS ARE OBSERVED?

In your capacity as the exporter, you are responsible for ensuring that the export and import transaction is executed properly. If the execution of the export transaction breaches any export regulations applicable in the Federal Republic of Germany or any import regulations applicable in the country of destination, this may release the Federal Government from any obligation to provide

indemnification (Art. 15 No. 3, Art. 16 (3) GC, see appendix). Accordingly, you should obtain information on all regulations of relevance for the execution of the contract (particularly those of the country of destination) as early as possible and in any case prior to the contract being performed and refrain from delivering the goods or providing the services if you have any concerns as to a possible breach of these regulations.

EXAMPLE:

One example here is the absence of an import licence required by local law or the receipt of a request from the buyer for under-invoicing in order to reduce customs duties. Similarly, a declaration to the effect that the goods do not originate from a certain country (subject to a boycott) or that you do not have any commercial relations with a country boycotted by the country of destination would jeopardise your entitlement to indemnification as it would constitute a boycott declaration which is not permitted under the Foreign Trade and Payments Ordinance.

WHAT SHOULD I DO IF CHANGES TO THE EXECUTION OF THE TRANSACTION ARE NECESSARY OR REQUESTED BY THE CUSTOMER AFTER THE GUARANTEE HAS BEEN GRANTED?

As a matter of principle, it is still possible to make changes to the execution of the transaction or the contractual agreements with the foreign debtor or other parties even after cover has been granted. However, it should be noted in this connection that the Interministerial Committee bases its decision concerning the provision of cover solely on the details specified in the application form and documented in the Guarantee Declaration. If these details no longer apply, the Federal Government's prior written approval must be sought (Art. 15 No. 2 GC, see appendix). Approval can only be dispensed with in the event of minor changes or additions. However, it should

be noted that in the case of any doubt, discrepancies in the details set forth in the application form or obtained from other sources will be deemed to be material.

EXAMPLE:

Subsequent changes to the payment terms, such as extensions, particularly require approval.

In the event of any deviation from the documented facts without the necessary approval, the Federal Government is released from its liability and, hence, its duty to provide indemnification if such non-approved deviation has given rise or is likely to give rise to loss. Regardless of the risk of – or actual occurrence of – a loss, the Federal Government is also released from liability if the Interministerial Committee would not have approved the changes or additions in accordance with the principles which it applies in making its decisions (Art. 16 (3), see appendix). This rule is significant in that the OECD Consensus imposes many binding rules on government export credit insurance covering such matters as maximum credit periods and the necessary prepayments (see Hermes Cover Special **Permissible payment terms**). The Federal Government can only provide cover of transactions which comply with the OECD Consensus and is not able to approve any change resulting in a breach of the Consensus rules.

If you are not certain whether a planned change is material and therefore requires approval, we advise you to contact Euler Hermes and to request approval as a precautionary measure.

WHAT SHOULD YOU DO IF YOU BECOME AWARE OF ANY CIRCUMSTANCES CONSTITUTING AN INCREASE OF RISK?

Circumstances which indicate that compliance with the payment obligation by your foreign customer/guarantor may be at risk are deemed to be circumstances constituting an increase of risk. It is crucial for the Federal Government to be notified of such circumstances not only so that it can monitor the risk covered, but also so that it can monitor the foreign debtor against which it may frequently have provided other cover in favour of other policyholders as well. The Federal Government must be informed of such increase of risk with minimum delay so that it can monitor the risk effectively and, if necessary, take measures to mitigate it such as, for example, excluding future deliveries and services from cover under the guarantee. The Federal Government is dependent on your assistance as you are the foreign debtor's business partner and contact and will generally be the first to become aware of any problems. Accordingly, you must immediately report in writing any circumstances constituting an increase of risk as soon as you become aware of them (Art. 15 No. 4 GC, see appendix). In addition, information which you receive from third parties on the foreign customer may represent reportable circumstances constituting an increase of risk.

The reporting duty is not confined to circumstances constituting an increase of risk in the case of covered receivables. Rather, the debtor's overall situation must be evaluated. Consequently, circumstances constituting an increase of risk are also reportable if they concern receivables which are not covered. Please also state the measures which you intend to take or have already taken to secure your claims.

INCREASE OF RISK

To help you understand what is meant by increase of risk, the General Terms and Conditions set out a number of standard examples. Although they cover the most important cases occurring in practice, they are not exhaustive. Ultimately, other circumstances may also be deemed to lead to an increase in risk and are therefore reportable. In the case of single transaction cover, these standard examples particularly include payment default, a request for a payment extension as well as any deterioration in payment practices, net assets or the general assessment of the foreign debtor/guarantor and are therefore reportable.

EXAMPLE:

Not every formal default must necessarily be reported. If, for example, a debtor with whom long-term business relations have been established has always paid all invoices in full in the past but invariably with a delay of two weeks, it will be generally reasonable to assume in the future that a delay of one or two weeks does not constitute any increase of risk although formally a default has already occurred. By the same token, a relatively short period in which payment is overdue may be deemed to constitute an increase of risk if the debtor has previously always paid punctually whenever payment was due.

If there are any circumstances constituting an increase of risk, the Federal Government's prior written approval must be obtained before any further deliveries are made or services provided (Art. 15 No. 5 GC, see appendix). If approval has not been requested, this may result in the Federal Government being released from any liability in the indemnification procedure (Art. 16 (3) GC, see appendix). Similarly, failure to report any circumstances leading to an increase of risk may release the Federal Government from liability if, as a result of the failure to submit the report, it is unaware of the increase of risk and is thus prevented from taking any measures to mitigate it. The legal consequences arising from the Federal Government's release from liability to pay indemnification for your goods and services may even arise if the failure to submit the report does not have any effect on your own cover (e.g. because all deliveries of goods and the provision of services have been duly executed prior to your becoming aware of the increase of risk) but the Federal Government is unable to take any measures to mitigate risk arising from cover provided for another policyholder against one and the same foreign debtor. In the case of any doubt, we would urge you to contact the experts of Euler Hermes and to submit an early report and, if necessary, to request any additional approval which may be necessary for future deliveries and services.

WHAT MEASURES MUST BE TAKEN TO PREVENT/MITIGATE LOSS?

Receivables management is of particular importance in connection with the general duty to prevent and mitigate loss (Art. 15 No. 6 GC, see appendix). Please note that the most common event of loss in practice, namely "protracted default", is only deemed to arise after the measures required by the due and reasonable care dictated by sound business and banking practice to collect the covered receivables have been taken.

The specific measures for collecting receivables materially depend on the reasons for the foreign customer's failure to pay.

EXAMPLE:

Generally speaking, it is not sufficient to merely send standardised reminder letters over an extended period. If the customer is principally willing to pay, an extension of the term for payment may be a possible option but generally requires the Federal Government's approval. If, on the other hand, the debtor is not cooperative or the measures taken do not produce the desired results, normally the services of third parties, e.g. foreign representatives, collection offices, foreign chamber of commerce, legal experts, should be retained.

As you are closer to the covered transaction and its execution than the Federal Government is and therefore have a greater knowledge of the relevant facts, you are primarily responsible for assessing the facts with the due and reasonable care customary in business/banking and for taking the necessary measures to avert and mitigate loss on this basis. You should always document your efforts to collect the receivables in writing so that you have proof of this in the indemnification procedure. If additional security has been documented in the Guarantee Declaration issued by the Federal Government, it can be expected that recourse will particularly be taken to this. Accordingly, it is necessary to state the reasons if, in exceptional circumstances, this is not the case. This materially also applies to security interest which were not documented. In difficult cases, it is therefore advisable to consult with the Federal Government at an early stage to agree on the measures to be taken against the debtor. In this way, you can benefit from our specific country expertise and have the certainty of knowing that the Federal Government supports the measures which you have taken. The employees of Euler Hermes will be pleased to provide you with any advice on this matter.

LEGAL VALIDITY OF THE DOCUMENTED SECURITY

Generally speaking, your task as the policyholder is to prove at your own expense the legal validity of the security detailed in the Export Guarantee Declaration if necessary (Art. 5 (2) GC, see appendix). The standard practice to date has been for security to be previously documented only if it is required for cover due to the poor credit standing of the foreign customer or the requirements stipulated for the country in question. If, in such cases, it is determined during the indemnification procedure that the documented security is not legally effective, this may lead to the loss of the entitlement to indemnification (Art. 16 (2) GC, see appendix). Accordingly, you should contact the employees of Euler Hermes in the event of any change in the legal or factual situation liable to affect the validity of the documented security.

Meanwhile, however, the OECD premium system also provides for discounts through the provision of security. If, in the future, a given item of collateral is expressly only to be documented in order to reduce the premium, any defect in the legal validity of this security interest will not result in the loss of entitlement to indemnification but only lead to the obligation to pay back the discount granted for this security interest.

WHO IS RESPONSIBLE FOR COLLECTING THE COVERED RECEIVABLE AFTER INDEMNIFICATION HAS BEEN PAID?

Even after you have received indemnification, you are still required to take all measures to collect the receivable, realise the security or otherwise to recover any funds (Art. 11 GC, see appendix). To determine which enforcement measures are specifically suitable and appropriate, it is necessary to estimate the prospects of success and the likely costs. As the Federal Government participates in the reasonable legal costs after paying indemnification provided that the measures are taken with its approval and the costs have not arisen from normal business activity (Art. 17 GC, see appendix), it is advisable to consult with the Federal Government closely with minimum delay. If despite such consultations it is not possible to reach any agreement on the measures to be taken, the Federal Government may, if necessary, issue binding instructions. However, it will still participate in the costs even in such cases. If, however, the duty to take legal action is breached, the Federal Government may reclaim any indemnification already paid including reimbursed costs (Art. 9 (3) GC, see appendix).

We advise you to acquaint yourself as early as possible with the applicable General Terms and Conditions and the Special Terms and Conditions in order to be fully aware of all duties related to a particular form of cover. If you have any queries, please do not hesitate to contact the specialists of Euler Hermes.

On our homepage under the heading “Loss and Indemnification” you will find the names of some persons to contact who will be pleased to assist you with detailed information.

CONCLUSION

To summarise, it is fair to say that in granting cover the Federal Government fundamentally does not expect more than your undertaking to observe the same high diligence dictated by sound business or banking practice as would normally apply in the absence of cover by the Federal Government. Observance of the specific duties specified by the relevant General Terms and Conditions and the Special Terms and Conditions of the Guarantee Declaration is crucial to ensure that the indemnification procedure is executed as smoothly as possible and helps to ensure that you receive indemnification in the event of any loss. We have described in this article the duties which are of particular relevance in practice. In order to gain a comprehensive idea of all your duties depending on the type of cover, we urge you to familiarise yourself with the applicable General and Special Terms and Conditions as early as possible and to contact the specialists of Euler Hermes if you have any questions.

If any evidence is found during the indemnification procedure of a possible breach of your duties, this does not automatically mean that your claims application will be rejected. Rather, a careful examination will be performed to determine whether the duty was actually breached in the light of all the pertinent facts and, in particular, the explanations which you submit. However, ex gratia decisions are not possible due to the binding effect of the German Federal Budget Code.

APPENDIX: EXTRACTS FROM THE GENERAL TERMS AND CONDITIONS SUPPLIER CREDIT GUARANTEES (GC (G)) AS AN EXAMPLE

The complete General Terms and Conditions can be found at www.exportkreditgarantien.de/en.

ART. 5 DUE DATE AND LEGAL VALIDITY OF THE GUARANTEED AMOUNT

- (1) A loss is only eligible for indemnification if the due date of the Guaranteed Amount has passed and the claim for payment is legally valid. If the entire balance of the Guaranteed Amount falls due as a result of contractual or statutory provisions, indemnification shall nevertheless be based on the due dates set forth in the export contract. The Federal Government is entitled, however, at its sole discretion to indemnify before these due dates.
- (2) The policyholder shall, at its own expense, provide evidence of the legal validity of the Guaranteed Amount and of the security detailed in the Guarantee Declaration, of the existence of the preconditions for the occurrence of an event of loss, as well as the cause and amount of loss. If the legal existence of the claim to the Guaranteed Amount or of the security detailed in the Guarantee Declaration is disputed or if legal defences or other objections are raised against them, the Federal Government is entitled to reject the application for indemnification pending evidence from the policyholder – if necessary by means of a decision by the court or arbitral tribunal having jurisdiction over the business relationship between it and its foreign debtor or security guarantor – which substantiates the legal validity of the Guaranteed Amount and the security detailed in the Guarantee Declaration; the risks of the applicable law or place of jurisdiction shall be borne by the policyholder.

- (3) In its relation to the Federal Government, it is the sole responsibility of the policyholder to ensure the legal validity of the Guaranteed Amount and of any security taken in respect thereof. Contracts and other documents pertaining to the Guaranteed Amount and any security in respect thereof will only be checked by the Federal Government in the event that a claim for indemnification is made. The policyholder must not rely on the argument that the Federal Government was or should have been aware of the content of such contracts or documents, or of individual parts thereof, at the time when the Federal Government assumed the Supplier Credit Guarantee.

ART. 9 REPAYMENT OF INDEMNIFICATION

- (1) If the legal validity of the Guaranteed Amount or the security set forth in the Guarantee Declaration is disputed or if defences or objections are raised against them, then the policyholder is obliged to notify this immediately during the indemnification procedure. If the policyholder fails to comply with this obligation, the Federal Government is entitled to reclaim any indemnification paid if and to the extent that knowledge of these circumstances would have led to rejection of the claim for indemnification.
- (2) If it emerges, following the payment of indemnification, that the policyholder's claim against the foreign debtor indemnified is not, either in whole or in part, legally valid, in particular if in a legal action for the enforcement of the indemnified claim the complaint is completely or partially rejected with finality by a court having jurisdiction, or if it emerges that the Federal Government was not obliged to indemnify for other reasons, the Federal Government is entitled to demand the return of the indemnification paid, including any costs reimbursed to the policyholder.

- (3) If the Federal Government is released from its obligation to indemnify due to circumstances which occur only after the indemnification has been paid, or if the policyholder fails to comply with its obligations under Art. 11 para. 1, the Federal Government is entitled to demand the return of the indemnification paid, including any costs reimbursed to the policyholder.
- (4) To the extent that the Federal Republic has a valid claim to repayment, the policyholder is obliged to pay interest on the repayable amount calculated, in the cases described under paragraphs 1 and 2, from the point at which indemnification was paid, and in cases described under paragraph 3 from the point at which the Federal Government was released from the obligation to indemnify, whereas the interest rate applicable shall be equal to the Federal Government's funding costs. Upon discharge of the claim to repayment of the Federal Government, any claims or other rights which passed to the Federal Republic pursuant to Art. 10 para. 1 hereof shall, insofar revert to the policyholder.
- (5) This shall be without prejudice to any other legal rights accruing to the Federal Government out of statutory provisions or general principles of law.

ART. 10 SUBROGATION OF RIGHTS AND CLAIMS

- (1) Upon payment of indemnification, the right to receive payment from the indemnified claim, together with the right to any interest or default interest in respect of such claim for the period following the payment of indemnification, any rights to payment arising out of any insurance, and any rights to amounts paid into accounts or deposited abroad, including any rights arising out of security in respect of any of these amounts, shall

pass to the Federal Government to the extent that this corresponds to the share in the loss that is borne by the Federal Government. The policyholder is obliged to undertake all necessary acts for the transfer of such claims and other rights at the request of the Federal Government.

- (2) If the transfer of such claims and any other rights proves to be impossible or if the Federal Government waives its right to the transfer, the policyholder shall hold the rights set forth in paragraph 1 in trust for the Federal Government.

ART. 11 LEGAL ACTION FOLLOWING INDEMNIFICATION

- (1) Without prejudice to the transfer of claims and any other rights pursuant to Art. 10, the policyholder is obliged to take all measures appropriate for the collection of the indemnified amount, for the realisation of any security the policyholder may hold or for the recovery of funds in any other way. The policyholder shall hereby comply with any instructions which may be given by the Federal Government. Legal action through the courts is also deemed to be such an appropriate measure. The Federal Government is entitled to refrain from giving instructions to bring a legal action if and when the place of jurisdiction or the applicable law do not allow an assessment of the chances of a successful legal action with sufficient accuracy, and the policyholder has no means of contracting out of the choice of such place of jurisdiction or the applicable law, or if and when the anticipated costs of the legal action are not in proportion to the amount of the claim or the anticipated prospects of success of the enforcement measures.
- (2) The Federal Government will participate in the costs arising from measures mentioned in paragraph 1 hereof on the terms contained in Art. 17.

- (3) If the policyholder is, at its own request, released from its obligation under paragraph 1 by the Federal Government, then the policyholder thereby forfeits its right to participate in any recoveries after indemnification in accordance with the uninsured percentage to be borne for its own account.

ART. 15 DUTIES OF THE POLICYHOLDER

In addition to the other obligations under these General Terms and Conditions and the provisions of the Guarantee Declaration, the policyholder is obliged to observe the following duties:

1. Duty to state the truth in the application for cover

When submitting its application for a Supplier Credit Guarantee, the policyholder is obliged to notify completely and truthfully in writing all and any information of material significance for the assumption of a Supplier Credit Guarantee and it must promptly give notice of any changes in the information given in the application, or new information which differs from that given in the application and becomes known prior to its receiving the Guarantee Declaration. All details asked for in the application form or otherwise are deemed to be of material significance.

2. Prohibition to deviate from the documented facts

Following the assumption of a Supplier Credit Guarantee, the policyholder must not, without the written approval of the Federal Government, make any changes or supplements affecting the set of facts (*Sachverhalt*) set out in the Guarantee Declaration or the agreements made with the debtor or other obligors, unless these changes or supplements are immaterial; Item 1, 2nd sentence hereof applies *mutatis mutandis*. In particular, the policyholder is not permitted to accept payment in a currency differing from the contract currency in discharge of the debt.

3. Compliance with laws and regulations

The policyholder may only perform the export contract if it complies with the export regulations of the Federal Republic of Germany, the export regulations issued by supranational institutions which are directly applicable in the Federal Republic of Germany and the import regulations of the country of destination.

4. Duty to notify an increase of risk

The policyholder shall give immediate written notice of any circumstances which come to its attention constituting an increase of risk and indicate what measures it has taken or proposes to take to protect its legal right to payment. In particular, the following circumstances are deemed to constitute an increase of risk:

- a) delay in payment or a request for extension of the payment period by the debtor;
- b) a worsening of the financial situation, the payment record or general market reputation of the debtor or a security guarantor, or an offer from the debtor to return goods already delivered or to discharge the debt in a manner that differs from its contractual obligation;

c) legislative or administrative measures or other political events abroad which have the effect of making the payment or collection of the Guaranteed Amount appear to be in jeopardy.

5. Duty to obtain approval in the case of an increase of risk

In the case of events described under item 4, the policyholder must obtain the prior written approval of the Federal Government before carrying out any delivery of goods or performance of services.

6. Duty to prevent or mitigate losses

The policyholder is obliged to exercise all the due and reasonable care dictated by sound business practice, to take all necessary and appropriate measures to prevent an event of loss or minimise losses, and will hereby comply with instructions, if any, given by the Federal Government. The policyholder is obliged to carry out these measures at its own expense, in so far as the Federal Government does not participate in these costs based on Art. 17. If an event of loss threatens or has already occurred, then the policyholder must, at the request of the Federal Government, commission either the Federal Government or a third party designated by the Federal Government to represent the interests of the two parties to the Guarantee Agreement, provided that the anticipated costs for commissioning the Federal Government or such a third party are in proportion to the Guaranteed Amount and the anticipated chances of success of the measures taken to pursue the interests of the parties.

7. Duty of information

The policyholder is obliged to keep the Federal Government or its designated representative informed at all times of the details and the current state of the export transaction and of any other circumstances with a potential material bearing on the Supplier Credit Guarantee. This duty includes the timely, truthful and complete response to questions asked for the preparation of a rescheduling agreement, as well as the furnishing of documents required as evidence of the amounts due.

8. Federal Government's right of examination

The Federal Government, the Federal Audit Office or their designated representatives are entitled to examine at any time the records, books of account and other documents which are potentially material to the Supplier Credit Guarantee and to make or require to be made copies thereof. The policyholder must, at the request of the Federal Government, arrange at its own expense to have documents which are in a foreign language translated into German.

ART. 16 LEGAL CONSEQUENCES OF NON-COMPLIANCE WITH DUTIES

(1) **Release of the Federal Government from liability in the case of false information**

If the policyholder fails to comply with the duty laid upon it under Art. 15 item 1 hereof, then the Federal Government is released from its obligation to indemnify a loss, unless the Federal Government determines that the incomplete or incorrect information constituting non-compliance would have had no influence on its decision to assume a Supplier Credit Guarantee. There will be no release from liability of the Federal Government if the policyholder neither knew nor could be expected to know that the information given by it was inaccurate or incomplete.

(2) **Release of the Federal Government from liability in the case of defective security**

If the security set forth in the Guarantee Declaration has not been created, or is not legally effective, the Federal Government is released from its obligation to indemnify a loss, unless the Federal Government determines that the missing or defective security would have had no influence on its decision to assume a Supplier Credit Guarantee.

(3) **Release of the Federal Government from liability in the case of other failure to comply with the policyholder's duties**

If the policyholder fails to comply with one of the duties laid upon him under Art. 15 items 2–8 and infringes its duty to exercise due and reasonable care in accordance with sound business practice, then the Federal Government shall be released from its obligation to indemnify a loss, unless the infringement of the relevant duty neither caused a loss nor is of such a nature as to expect that it may result in a loss.

Irrespective of whether a loss occurred or is expected to occur, the Federal Government is released from its obligation to indemnify a loss in the case of non-compliance with a duty pursuant to Art. 15 item 2 hereof, if it determines that, under the normal practice it follows when deciding on assuming cover, it would not have approved the changes or supplements concerned.

In the case of non-compliance with a duty pursuant to Art. 15 item 4 hereof, the Federal Government is released from the obligation to indemnify a loss if the fact that information which should have been notified was unknown to the Federal Government has led to a situation whereby the risk for the Federal Government in connection with other export credit guarantees has been increased, or has prevented the Federal Government from taking steps to mitigate the risk.

(4) The Federal Government may, at its sole discretion, partially waive its release from the obligation to indemnify a loss, depending on the circumstances of the individual case, particularly taking into account the risk which has materialised and the severity of the non-compliance.

(5) As far as there are no legal consequences prescribed separately for infringements of other duties laid upon the policyholder by these General Terms and Conditions and the provisions of the Guarantee Declaration, paragraphs 1–4 shall apply mutatis mutandis.

(6) Any claims and other rights of the Federal Government based on statutory law or the application of the general principles of law shall not be affected by the provisions of these General Terms and Conditions and the provisions of the Guarantee Declaration.

- (7) The Federal Government shall not be liable for circumstances and risks which result from the failure by the policyholder to comply with the standards of due and reasonable care to be expected of the policyholder in accordance with sound business practices.
- (3) Costs normally involved in collecting an amount due, including costs for the protesting of bills, or costs arising in the normal course of the policyholder's business activities shall be borne by the policyholder.
- (4) Art. 9 paras. 2 and 4 hereof apply mutatis mutandis.

ART. 17 PARTICIPATION OF THE FEDERAL GOVERNMENT IN COSTS ARISING FROM LEGAL PROCEEDINGS AS WELL AS FROM THE PREVENTION OR MITIGATION OF LOSSES

- (1) Following indemnification, the Federal Government will participate in reasonably incurred costs of legal proceedings pursuant to Art. 11 para. 1, to the extent that such legal proceedings are pursued with the consent of, or upon instruction by, the Federal Government. Prior to indemnification, the Federal Government may participate in reasonably incurred costs of measures for the purpose of prevention or mitigation of losses pursuant to Art. 15 item 6 hereof as far as such measures are pursued with the consent of, or upon instruction by, the Federal Government, the action transcends customary measures of prevention or mitigation of losses and the costs thereby incurred constitute a substantial burden for the policyholder considering the type and volume of its business activities.
- (2) The participation of the Federal Government is dependent on the extent to which the amount due subject to the measures determined in paragraph 1 has been indemnified or could be indemnified if an event loss occurs.

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.

Euler Hermes Aktiengesellschaft

Postal address:
P.O. Box 500399
22703 Hamburg, Germany

Office address:
Gasstrasse 29
22761 Hamburg, Germany

Phone: +49 40 8834-9000
Fax: +49 40 8834-9175

info@exportkreditgarantien.de
info@ufk-garantien.de
www.exportkreditgarantien.de/en

Branch offices: Berlin, Dortmund, Frankfurt, Stuttgart, Hamburg,
Munich, Nuremberg, Rhineland